Annual Report

Director of Investigation and Research

Combines Investigation Act

For the year ended March 31, 1984

Consumer and Corporate Affairs Canada

Consommation et Corporations Canada

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for the year ended March 31, 1984
to the Hon. Michel Côté, Minister

Consumer and Corporate Affairs Canada
Consommation et Corporations Canada

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November 20, 1984

The Honourable Michel Côté, P.C., M.P., C.A.,
Minister of Consumer and Corporate Affairs,
Ottawa

DEAR SIR:

I have the honour to submit, pursuant to section 49 of the Combines Investigation Act, the following report of proceedings under the Act for the fiscal year ended March 31, 1984.

Yours very truly,

Lawson A.W. Hunter
Director of
Investigation and Research

CONTENTS

		Page
Chapter I	Introduction and Summary of Act and Procedures	1
	1. Criminal Offences and Penalties under Part V of the Act	1
	2. Civil Reviewable Matters and Remedies under Part IV.1 of the Act	3
	3. Procedures	4
	(1) Initiation and Conduct of Inquiries	4
	(2) The Restrictive Trade Practices Commission	5
	(3) Enforcement	5
	(4) Special Remedies	6
	(5) Representations before Regulatory Boards	6
	4. Information and Compliance Program	6
Chapter II	Current Developments	8
	1. The State of Competition	8
	2. Statistics	14
	3. Decisions, Reports and Other Matters of Special Interest	15
	(1) Charter of Rights and Freedoms	15
	(2) Other Constitutional Issues	17
	(3) Intent in Conspiracy Prosecutions	18
	(4) Crown Immunity in Combines Prosecutions	19
	(5) Buying Groups	20
	(6) Representations Related to Mortgage Renegotiation	22
	(7) Canada/U.S. Memorandum of Understanding	22
	4. Remedies under the Combines Investigation Act	23
	(1) Fines as a Means of Deterrence	23
	(2) Order of Prohibition	24
	(3) Undertakings with Major Motion Picture Distributors	24
	(4) Private Actions	25
Chapter III	Manufacturing Branch	29
	1. Activities	29
	2. Proceedings Following Direct Reference to the Attorney General of Canada Pursuant to Subsection 15(1) of the Act	29
	3. Applications by the Director to the Restrictive Trade Practices Commission under Part IV.1	43
	4. Discontinued Inquiries Reported to the Minister in Accordance with Subsection 14(2) of the Act	43
	5. Other Matters	46
Chapter IV	Resources Branch	47
	1. Activities	47
	2. Proceedings Following Direct Reference to the Attorney General of Canada Pursuant to Subsection 15(1) of the Act	47
	3. Applications by the Director to the Restrictive Trade Practices Commission under Part IV.1	50

	4. Discontinued Inquiries Reported to the Minister in Accordance with Subsection 14(2) of the Act	51
	5. Director's Representations to Regulatory Boards	52
	6. Activities Related to Agricultural Policy	56
	7. Other Matters	56
Chapter V	Services Branch	58
	1. Activities	58
	2. Proceedings Following Direct Reference to the Attorney General of Canada Pursuant to Subsection 15(1) of the Act	58
	3. Applications by the Director to the Restrictive Trade Practices Commission under Part IV.1	63
	4. Discontinued Inquiries Reported to the Minister in Accordance with Subsection 14(2) of the Act	67
	5. Other Matters	68
Chapter VI	Regulated Sector Branch	72
	1. Activities	72
	2. Proceedings Following Direct Reference to the Attorney General of Canada Pursuant to Subsection 15(1) of the Act	72
	3. Director's Representations to Regulatory Boards	73
	4. Other Matters	92
Chapter VII	Marketing Practices Branch	94
	1. Activities	94
	2. Proceedings	94
	3. Discontinued Inquiries Reported to the Minister in Accordance with Subsection 14(2) of the Act	97
	4. Other Matters	97
Chapter VIII	Economic Analysis and Policy Evaluation Branch	99
	1. Activities	99
	2. Policy Evaluation and Development	99
	3. International Relations	101
	4. Briefing Coordination	102
	5. Strategic Planning in the Bureau	102
	6. Combines Investigation Act Enforcement Support	102
	7. Policy-related Applied Industrial Organization Studies	103
	8. Other Matters	105
Appendix I	Reports by RTPC and Action Taken Thereon	106
Appendix II	Proceedings Completed in Cases Referred to the Attorney General of Canada Direct	110
Appendix III	Proceedings Completed Following Application to the Restrictive Trade Practices Commission under Part IV.1 of the Act	134

Appendix IV	Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases	135
Appendix V	Table of Cases	146
Appendix VI	Recent Publications of the Bureau of Competition Policy	151
Appendix VII	Administration and Organization of the Bureau of Competition Policy	152
Appendix VIII	Regional and District Offices	154
Appendix IX	Canada/U.S. Memorandum of Understanding	155
Index to Products, Studies and Other Specific Matters		160

CHAPTER I

INTRODUCTION AND SUMMARY OF ACT AND PROCEDURES

This report is made pursuant to section 49 of the Combines Investigation Act (unless the contrary is indicated references are to Chapter C-23 of the Revised Statutes, 1970, as amended), which provides as follows:

> 49. The Director [of Investigation and Research appointed under the provisions of the Act] shall report annually to the Minister the proceedings under this Act, and the Minister shall within thirty days after he receives it lay the report before Parliament, or, if Parliament is not then in session, within the first fifteen days after the commencement of the next ensuing session.

The purpose of the Combines Investigation Act is to assist in maintaining effective competition as a prime stimulus to the achievement of maximum production, distribution and employment in a mixed system of public and private enterprise. To this end, the legislation seeks to eliminate certain practices in restraint of trade, and to overcome the negative effects of concentration, that tend to prevent the economic resources of Canada from being used most effectively to the advantage of all. The Act also contains provisions against misleading advertising and deceptive marketing practices.

Until January 1, 1976, the Act had general application only to commodity production and trade, although certain services in connection with commodities and the price of insurance were also covered. In 1976 the Act was made applicable to pure services by virtue of the Stage I amendments, in the planned two-stage revision of the Act. As a result of the inclusion of services, all economic activities are now subject to the Act except those specifically exempted in whole or in part by the Act, i.e., collective bargaining activities, amateur sports and securities underwriters, or exempted as a result of other legislation, e.g., the Bank Act.

In some areas of the economy, commercial activity, including some of its competitive aspects, is subject to regulation under federal, provincial or municipal legislation. Examples may be found in the fields of marketing legislation, resources conservation and regulation of communications systems. Although such controls may restrict competition, if they are imposed pursuant to valid legislation the Combines Investigation Act does not apply.

During the year, as in other years, members of the public have sought from the Director of Investigation and Research relief against alleged violations of the Act by suppliers or competitors which, they said, were jeopardizing the solvency of their businesses. To such complainants it has been stressed that the machinery of the Combines Investigation Act is not designed to provide quick relief in such situations. Its purpose is primarily to maintain a competitive environment over a longer period. Although efforts are made to expedite any inquiry, in these circumstances the time required to complete it may be too long to assist such complainants with their immediate problems. The Director, however, brought to the attention of such complainants the provisions in section 31.1, described hereafter, which permit any person to take proceedings in the ordinary civil courts to recover damages they have suffered from conduct prohibited by the Combines Investigation Act.

1. Criminal Offences and Penalties under Part V of the Act

Part V of the Act prohibits under criminal sanctions certain practices which may be generally classified as combinations to lessen competition, mergers and monopolies, specified trade practices, and misleading advertising and deceptive marketing practices.

(a) *Combinations to Lessen Competition (sections 32 to 32.3)*

Combinations, agreements or arrangements in relation to the supply, manufacture, production, etc., of a product to lessen competition unduly are prohibited. The essence of the offence is conspiracy but it is not necessary to prove that the combination, agreement or arrangement would be likely to eliminate, completely or virtually, competition in the market to which it relates. Bid-rigging whereby one party agrees to refrain from bidding in response to a call for tender or where there is collusion in the submission of bids is, unless made known to the tendering authority, prohibited outright with no requirement of undue lessening of competition. The implementation of a foreign directive by a company operating in Canada that gives effect to an agreement or arrangement entered into outside Canada, which would otherwise be in violation of section 32, is an offence under section 32.1. This section may not be used, however, if any proceedings have been instituted under paragraph 31.6(1)(b) referred to below. Finally, it is an offence under section 32.3 to conspire or agree to limit unreasonably the opportunities for anyone to participate in professional sport or to negotiate with the team of his choice. Certain matters such as the international character of the sport must be taken into account by the courts in determining whether an offence has occurred under this provision.

(b) *Mergers and Monopolies*

Being a party to or assisting in, or in the formation of, a merger or monopoly as defined is an offence under section 33. A merger is defined as the acquisition of control over or interest in the business of a competitor, supplier, customer or other person whereby competition would be lessened to the detriment of the public. Monopoly is defined as a situation where one or more persons substantially or completely control, in any area of Canada, the class or species of business in which the person is engaged and has operated or is likely to operate the business to the detriment of the public.

(c) *Specified Trade Practices*

Under section 34 it is an offence to be a party to a sale that discriminates against competitors of a purchaser of an article by granting a discount, rebate, allowance, price concession or other advantage to the purchaser that is not also available to the competitors. An offence does not occur, however, unless such a sale is part of a practice of discriminating. It is also an offence to engage in predatory pricing policies whereby products are sold at lower prices in one area of the country than in the remaining areas, or of selling at unreasonably low prices where the effect, tendency or design is to lessen competition substantially, or eliminate a competitor. In addition, section 35 prohibits the granting to a purchaser of an allowance for advertising purposes that is not offered on proportionate terms to competing purchasers.

A supplier, or a person engaged in a business that relates to credit cards, is prohibited under section 38 from attempting to influence upward or discourage the reduction of the price at which another person supplies or advertises a product; or to refuse to supply anyone because of that person's low pricing policy. It is further prohibited to attempt to induce a supplier to refuse to supply any person because of that person's low pricing policy. If a supplier indicates a retail price in an advertisement for a product, the price must be so expressed as to make it clear to any person to whose attention the advertisement comes that the product may be sold at a lower price. This section does not prohibit a supplier from affixing a price to a product supplied by him where the supplier makes no attempt to enforce that price.

(d) *Misleading Advertising and Deceptive Marketing Practices*

All representations, in any form whatever, that are false or misleading in a material respect are prohibited (paragraph 36(1)(a)).

Any materially misleading representation as to the price at which the product is ordinarily sold is prohibited. A representation as to price means the price that the product ordinarily sells for in the market area, unless specified to be the advertiser's own selling price (paragraph 36(1)(d)).

When a person clearly expresses two or more prices shown on a product, its container or wrapper, etc., the product must be supplied at the lower price. This provision does not actually prohibit the existence of two or more prices, but requires that the product be offered for sale at the lower price (section 36.2).

Any advertisement of a product at a bargain price that the advertiser does not have available for sale in reasonable quantities, having regard to the nature of the market, the nature and size of his business and the nature of the advertisement, is prohibited. The advertiser will not be liable, however, where he can establish that the non-availability of the product was due to circumstances beyond his control or that the quantity of the product he had obtained was reasonable, having regard to the nature of the advertisement, or that he offered a raincheck when his supplies were exhausted.

The sale of any product by a retailer at a price higher than the price currently being advertised by him is prohibited, and the seller is liable unless the price advertised was an error and has been corrected immediately (section 37.1).

Any contest that does not disclose the number and approximate value of prizes or important information relating to the chances of winning in the contest, that does not select participants or distribute prizes on the basis of skill or on a random basis, or in which the distribution of prizes is delayed, is prohibited (section 37.2).

Other misleading advertising and deceptive marketing practices provisions relate to performance claims, warranties, tests and testimonials, and pyramid and referral selling schemes. There are also various exclusions and limitations applicable to the provisions as well as various defences.

(e) *Penalties*

The offences in Part V, other than misleading advertising and deceptive marketing practices, are indictable. Section 32.1, which involves foreign directives to a Canadian affiliate to give effect to a conspiracy in restraint of trade outside Canada, provides only for a monetary penalty in the discretion of the court since only companies may be prosecuted. Section 32, prohibiting conspiracy in restraint of trade, provides for maximum penalties of $1,000,000 or five years imprisonment or both. In the remaining provisions, the maximum term of imprisonment is two years or five years, as the case may be, or an unlimited fine at the discretion of the court. The discretion with respect to the monetary penalty is either stated expressly in the section or may be determined by reference to the Criminal Code when only a maximum term of imprisonment of two years or five years, as the case may be, for indictable offences is set out.

Offences in relation to misleading advertising and deceptive marketing practices, with three exceptions, may be prosecuted by way of summary conviction or on indictment. Where proceedings are by way of summary conviction the maximum penalties that may be imposed are $25,000 or one year imprisonment or both. In the case of proceedings by indictment, the maximum penalties are an unlimited fine at the discretion of the court or five years imprisonment or both. The three exceptions are double ticketing, bait and switch selling and sale above advertised price, which may be prosecuted only by way of summary conviction. In the latter two the maximum penalty is $25,000 or one year imprisonment or both while in the case of double ticketing it is $10,000 or one year imprisonment or both. Where proceedings for any of these offences are instituted by way of summary conviction, the time within which charges must be laid is two years.

2. Civil Reviewable Matters and Remedies under Part IV.1 of the Act

Part IV.1 of the Act applies to certain specified situations which, although not prohibited, are capable of being desirable or undesirable depending upon the particular facts of the case. The Part therefore provides that where the situation comes within the criteria set out, the Director, if he considers that action is warranted, may make application to the Restrictive

Trade Practices Commission for an order as provided in the relevant section. The Commission may, after affording the parties an opportunity to be heard, make remedial orders if appropriate.

—Refusal to sell. Where a person is substantially affected in his business by such refusal even though he is willing and able to meet the usual trade terms, and when his inability to obtain supplies of a product that is in ample supply is because of insufficient competition, the Commission may order that he be supplied or recommend reduction in customs duties (section 31.2).

—Consignment selling introduced by a supplier who ordinarily sells the product for resale for the purpose of controlling dealer prices or discriminating in price. The Commission may order the supplier to cease the practice (section 31.3).

—The practices of exclusive dealing, tied selling and market restriction. Exclusive dealing occurs when a purchaser is required to deal in particular products only or primarily. Tied selling occurs when the sale of one product is tied to the sale of another. Market restriction occurs when a supplier, as a condition of sale, imposes restrictions as to the market in which his customer may deal. Where any of these practices is engaged in by a major supplier or is widespread in a market and competition is or is likely to be lessened substantially, the Commission may order a supplier to cease or modify such practice (section 31.4).

—The implementation in Canada of foreign judgments, decrees, orders or other processes adversely affecting competition, efficiency or trade. The Commission may prohibit such implementation in whole or in part (section 31.5).

—The making of a decision in Canada as a result of a foreign law or directive adversely affecting competition, efficiency or trade. The Commission may prohibit implementation in whole or in part (section 31.6).

—The making of a decision in Canada as a result of a communication from a person abroad where the communication is to give effect to a conspiracy, combination, agreement or arrangement entered into outside Canada that, if entered into in Canada, would have been in violation of section 32 relating to combinations unduly lessening competition. The Commission may prohibit implementation. This section may not be used against a company where proceedings have been commenced against it under section 32.1 (section 31.6).

—Refusal by a foreign supplier to supply a person in Canada by reason of the exertion of buying power outside Canada by another person. The Commission may order any person in Canada on whose behalf the buying power was exerted to sell the product at cost to the person refused, or not to deal in the product (section 31.7).

When the Commission sits under Part IV.1, the orders which it may issue are binding upon the persons to whom they are addressed. Failure to comply with such an order is an offence under section 46.1 of the Act and may be prosecuted either on indictment or by summary conviction and is subject to a fine, imprisonment or both.

The remaining provisions of the Act are mainly concerned with procedure, administration, evidence and enforcement.

3. Procedures

The provisions of the Combines Investigation Act are applied by the Director of Investigation and Research, the Restrictive Trade Practices Commission and the courts.

(1) *Initiation and Conduct of Inquiries*

An inquiry under the Act is most frequently commenced by the Director when, through an informal complaint or otherwise, he has reason to believe that there has been a violation of the Act or that grounds exist for the Commission to make an order under Part IV.1. Less often

the Director receives a formal application for an inquiry from six persons in the form of a statutory declaration, and there is provision for the Minister to direct that an inquiry be undertaken.

Once an inquiry has begun the Director may, under certification of a member of the Restrictive Trade Practices Commission, require anyone to make written returns of information and authorize his representatives to search premises for evidence pertaining to the matter under inquiry. The Director may also apply to the Commission under section 17 for an order that any person be examined under oath.

The Director may, at any time, discontinue an inquiry that does not justify further inquiry. He is required, however, to report on any such discontinuance to the Minister, if the inquiry resulted from a formal application. Also, he must notify the complainants of the reasons for the discontinuance. Otherwise, he may remit the evidence obtained in an inquiry to the Attorney General of Canada for such action as the latter may decide to take, or he may pursue the matter before the Restrictive Trade Practices Commission.

(2) *The Restrictive Trade Practices Commission*

As a result of the 1976 amendments, the Commission has a dual role. In inquiries into Part V offences, if the Director submits a statement of evidence to the parties and the Commission, the Commission acts as a fact-finding and reporting body. It holds hearings at which arguments are submitted, and persons against whom an allegation has been made in the statement are allowed full opportunity to be heard in person or by counsel and the case is argued. The Commission then makes a report in writing to the Minister of Consumer and Corporate Affairs which is required to be made public within 30 days of its receipt. Hearings in connection with these inquiries are held in private unless the Chairman of the Commission orders otherwise. In recent years, only a few cases have been brought to the Commission for a report (chiefly general or research inquiries) because the public interest is best served by sending the evidence, if a suspected offence is involved, direct to the Attorney General of Canada for purposes of prosecution. A list of the recent reports of the Commission and a summary of the resultant action is found in Appendix I. Proceedings completed in cases referred directly to the Attorney General are summarized in Appendix II.

The second role of the Commission is to act, pursuant to Part IV.1 of the Act, as a court of record to receive applications from the Director to review various situations which may be undesirable and to make remedial orders binding upon persons to whom they are addressed. In these proceedings the Commission is acting in a judicial capacity and is required to give reasonable opportunity to be heard to affected parties at hearings held in public unless in some particular situation the Chairman orders them closed.

In addition to the foregoing, before the Director may exercise his investigatory powers, their use in each case must be authorized by a Member of the Commission.

(3) *Enforcement*

At any stage of an inquiry, whether or not the matter has been referred to the Commission and a report made thereon, the Director may submit the evidence gathered in the inquiry to the Attorney General of Canada for such action as he may be pleased to take. Each offence provision of the Act specifies whether the matter is to be prosecuted by way of summary conviction or on indictment and sets out the amount of any fine or the length of imprisonment that may be imposed. The Act also provides that prosecutions for indictable offences and certain other proceedings under the Act may be conducted in the Federal Court — Trial Division, thereby giving it concurrent jurisdiction with provincial superior courts of criminal jurisdiction, and that an appeal from a judgment of this court lies to the Federal Court of Appeal and from that court to the Supreme Court of Canada. The consent of an individual accused is, however, required before prosecution may be instituted in the Federal Court — Trial Division.

(4) *Special Remedies*

In addition to the penalties set out in Part V of the Combines Investigation Act, the Act provides certain special remedies.

(i) *Injunctive Proceedings under Sections 29.1 and 30*

Under section 29.1 of the Act, an interim injunction may be issued to prevent any person from doing things forbidden by the Act pending adjudication of the matter. Such an injunction may only be issued if the court is satisfied that irreparable damage will otherwise result. Under subsection 30(l) of the Act, a person convicted of an offence under Part V may be prohibited from the continuation or repetition of the offence or from doing anything directed towards such continuation or repetition. Where a conviction is with respect to a merger or monopoly, the order may require action to dissolve the merger or monopoly. Subsection 30(2) provides that an order may be granted in proceedings commenced by information of the Attorney General of Canada, or the Attorney General of a province, without any prosecution having been instituted where it appears that a person has done, or is likely to do, anything constituting or directed toward the commission of an offence under Part V.

(ii) *Damages*

Under section 31.1 of the Act, a person who has suffered loss or damage as a result of conduct contrary to any provision of Part V of the Act, or as the result of the failure of any person to comply with an order of the Commission or a court under the Act, may sue for and recover damages equal to the amount suffered by him, together with the costs of the investigation and proceedings. To facilitate such private action, it is also provided that the record of any proceedings in which a person was convicted of an offence arising from any such conduct or failure is proof that the person against whom the private action is brought engaged in that conduct, and any evidence given in the proceedings as to the effect of such conduct on the plaintiff is evidence in the private action.

(iii) *Patent and Trade Mark Rights*

Section 29 of the Act provides that the Federal Court may, on the information of the Attorney General of Canada, make orders to correct misuse of patent or trade mark rights. Such orders may revoke a patent or cancel the registration of a trade mark, or prescribe lesser remedies where such rights have been used to restrain trade or injure competition in the manner described in that section.

(iv) *Tariff Adjustment*

Section 28 of the Act empowers the Governor in Council to reduce or abolish the tariff on an article where it appears, as the result of an inquiry under the Act or from judicial proceedings taken pursuant to the Act, that a combination, merger, or monopoly to promote unduly the advantage of manufacturers or dealers at the expense of the public has existed and has been facilitated by the duties of customs imposed on the article.

(5) *Representations before Regulatory Boards*

Section 27.1 of the Act expressly authorizes the Director to make representations to and to call evidence before federal boards, commissions or other tribunals in order to draw to their attention considerations relevant to the maintenance of competition in connection with matters being heard before them.

4. Information and Compliance Program

While the enforcement of the Combines Investigation Act depends largely upon investigation of complaints of violations received from consumers and businessmen and from press reports, careful attention is given to the encouragement of voluntary compliance. Businessmen

have for many years come to the Bureau for advice respecting the application of the Combines Investigation Act. Consultation with businessmen about their problems has been sponsored as a positive program. It has been referred to in earlier annual reports as the program of compliance and it is intended to be a vigorous and sustained program involving education and explanation, discussion of business problems and the giving of opinions concerning the application of the Act. During the year, 22 formal compliance opinions were provided (not including Marketing Practices) and approximately 98 informal discussions were held with businessmen.

As part of the program, businessmen are invited to discuss their problems before they decide to introduce policies that might prove to be in conflict with the Combines Investigation Act. The Director of Investigation and Research has no authority to regulate business practices or to decide the law, but he tries to assist businessmen to avoid coming into conflict with the Act by studying matters they submit to him and indicating to them whether or not the adoption of proposed plans would lead him to launch an inquiry. Businessmen who consult him are not bound by any opinion he gives and remain free to adopt practices which they are prepared to have tested before the Restrictive Trade Practices Commission and the courts. The Director, similarly, cannot bind himself or his successors by such opinions and always makes it clear that the matter would be subject to review if there should be any change in the details of the proposed plan or its method of implementation.

As part of the information program, senior staff members undertook speaking engagements before trade associations and other business societies, professional associations and other groups concerned with the Act during the year. Persons who wish to obtain general information relating to the activities of the Bureau of Competition Policy or on the Combines Investigation Act can request it from the Office of Enforcement Operations of the Bureau of Competition Policy or the appropriate enforcement branch of the Bureau. Information respecting the marketing practices provisions of the Act can be obtained from the head office of the Marketing Practices Branch in Hull or any of the regional and district offices of the department. A number of publications are available to the public; a list of the more recent is provided in Appendix VI. The Marketing Practices Branch publishes a quarterly *Misleading Advertising Bulletin* containing information relating to the provisions of the Act administered by it.

CHAPTER II

CURRENT DEVELOPMENTS

1. The State of Competition

Increased Competition in the Canadian Economy

Over the past decade, various structural changes have occurred which have had important implications for the degree of competition prevailing in different sectors of the Canadian economy. For example, the GATT-TOKYO round of tariff reductions has increased the international trade exposure of Canadian manufacturing industries; revisions to the Bank Act have resulted in considerable overlap in the range of services provided by different financial institutions and have allowed for foreign bank entry; the Stage I amendments to the Combines Investigation Act extended its coverage to the service-producing industries, which account for approximately 64 per cent of the Canadian gross domestic product; U.S. deregulation of various transportation modes has had spill-over effects in Canada; and there has been a significant increase in corporate merger activity and in the number of government enterprises providing marketable goods and services.

The net impact of these economic cross-currents on the general state of competition in the Canadian economy is difficult to gauge in a precise manner. Such an exercise would require in-depth analysis, on an industry-by-industry basis, of factors which determine the ability of firms to directly influence or control market outcomes — particularly relating to prices, output, profit levels, product attributes and innovation. However, notwithstanding the lack of such detailed information, it is the general view of the Director that developments which have occurred over the past decade, as well as others which are in the offing, point toward increased competition in the Canadian economy. Some of the facts which can be highlighted in this connection are:

—the stabilization, in recent years, of the postwar trend toward higher aggregate and industry concentration levels;

—the significant degree of entry and exit of firms across industries;

—the turnover in the relative ranks of leading firms, which suggests they are not necessarily entrenched in their respective market positions;

—the reductions in tariffs, which have resulted in import penetration and increased competitive pressures on domestic industries;

—the decrease in horizontal merger activity among firms and the apparent increase in the rationalization of inefficient production; and

—the direction of regulatory changes in the transportation, telecommunications and financial sectors aimed towards more open and flexible markets and institutional arrangements.

While these changes are noteworthy, it should also be remembered that the structure of the Canadian economy is still less competitive than that of its major trading partner, the United States. In the United States, it has been estimated that approximately 78 per cent of national income emanates from sectors/industries which are "effectively competitive." In Canada, the estimate is lower and stands at approximately 44 per cent. In addition, aggregate and industry concentration levels prevailing in Canada continue to remain higher than those of other Western industrialized countries, and a large portion of our economic activity (32 per cent) remains governed by regulations which affect price and output levels.

Legislation

(a) *Revisions to Canadian Competition Law*

During the year, the consultation process initiated by the Honourable André Ouellet to seek the views of interested parties on proposals to amend the Combines Investigation Act was continued by the Honourable Judy Erola. More extensive consultation was carried on with a task force representing the Business Council on National Issues, the Canadian Manufacturers' Association and the Canadian Chamber of Commerce. Other groups consulted included the Canadian Federation of Independent Petroleum Marketers, the Consumers' Association of Canada and the Grocery Products Manufacturers' of Canada, among others. The purpose of this consultation was to ensure that the proposed amendments did not have unintended effects on the private sector.

The draft Bill clarifies and strengthens the conspiracy prohibition and makes mergers and abuses of dominant positions subject to review before courts under civil procedure. It provides for the mandatory prenotification of mergers involving very large firms. It widens the export exemption to the conspiracy provision and empowers the Restrictive Trade Practices Commission to authorize specialization agreements among firms. The matters reviewable by the Commission in the present Act, such as refusal to deal, tied selling and market restriction, will be adjudicated by the civil courts, and a new reviewable matter will be added to deal with the practice of delivered pricing. The Bill will also remove the Crown immunity from Crown corporations that are agents of Her Majesty when in competition with other persons and make bank mergers and agreements among banks subject to the Combines Investigation Act.

It is the intention of the Honourable Judy Erola that the Bill be referred to Parliamentary Committee after tabling and Second Reading for detailed study, thus providing further opportunity for interested parties to submit their views.

(b) *Shipping Conferences Exemption Act, 1979*

The Shipping Conferences Exemption Act, 1979 (SCEA) provides a broad exemption from the Combines Investigation Act for members of ocean liner freight shipping conferences operating in trade routes to or from Canada. For the past two years this legislation has undergone an interdepartmental review, in which the Bureau of Competition Policy has participated extensively. A survey report prepared by the Bureau, based on contacts with more than 300 Canadian exporters, importers and freight forwarders, documented extensive user dissatisfaction with existing conference practices. A set of proposals circulated by the Bureau to industry and departmental representatives called for a number of changes in the Act.

A Bill to amend the Shipping Conferences Exemption Act, S-12, was introduced in the Senate on March 27, 1984. It is intended, *inter alia*, to: (i) authorize the Canadian Transport Commission, following a public hearing, to remove an individual conference's exemption when necessary to protect the public interest; (ii) remove the existing exemption for agreements between conference and nonconference carriers; (iii) clarify that predatory rate setting by conference members will result in removal of the exemption under SCEA; (iv) establish a statutory "right of independent action" for all members of conferences in trade routes not served by competing nonconference carriers; (v) establish that conference loyalty contracts may cover less than 100 per cent of a shipper's cargo; and (vi) strengthen the ability of the Canadian Shippers' Council, a users' organization designated under the Act, to negotiate effectively with conferences regarding rates, surcharges and other service conditions. To some extent these changes correspond to similar provisions of the recently enacted U.S. Shipping Act of 1984. When passed, the SCEA amendments are expected to strengthen the bargaining position of users and encourage efficiency in the market for liner services.

Telecommunications

Historically, telecommunications services in Canada have been provided by regulated monopolies. This situation reflected the prevailing view that the provision of such services constituted a natural monopoly owing to the presence of economies of scale and scope. However,

in recent years technological developments in telecommunications and related fields have reduced the capital costs of producing telephone equipment and services and blurred the line distinguishing the telecommunications industry from other industries. The market now offers a wide range of competing equipment, services and transmission media.

These developments have undermined the natural monopoly rationale for the regulation of much of the industry. There is now widespread recognition that competition is a feasible alternative to regulation in the markets for many goods and services and that it is far superior from the standpoint of economic efficiency and growth. Spurred on by developments in the United States, a movement commenced in Canada toward more competition and less regulation with the decisions of the Canadian Radio-television and Telecommunications Commission (CRTC) in the late 1970s to permit the attachment of customer-owned terminal equipment to the public switched telephone network of the federally regulated common carriers and to facilitate the entry of CNCP Telecommunications (CNCP) into the market for private line communications services. Encouraging signs of further opportunities for expanded competition in telecommunications markets have occurred during the past year.

Among the major developments were the following:

(a) the Department of Communications selected Cantel Cellular Radio Group Incorporated (Cantel) as a national licensee to provide cellular radio service in competition with the licensed operating common carrier (telephone company) in each of 23 urban areas;

(b) the Minister of Communications elected to require Bell Canada to offer its cellular radio services through a separate subsidiary and to delay the implementation of its services until Cantel was in a position to offer its competing service;

(c) the CRTC approved the interconnection of Cantel's network with the local telephone networks of the federally regulated common carriers and instructed the parties to enter into negotiations to establish the appropriate terms and conditions of interconnection;

(d) the CRTC ruled that licensed broadcasting undertakings were permitted to resell and share excess Telesat satellite channel capacity with other such undertakings for broadcast programming purposes;

(e) the CRTC announced a public hearing for October 1984, to review an application by CNCP to enter into the provision of public long-distance telephone service in competition with federally regulated common carriers and to review whether to permit resale and sharing of the services and facilities of these same carriers;

(f) in Nova Scotia and New Brunswick, the respective Boards of Commissioners of Public Utilities have decided to examine the issue of whether to approve the attachment of customer-owned terminal equipment to the networks of the provincial telephone companies; and

(g) the Federal Minister of Communications announced that his department intended to conduct a thorough review of telecommunications policy, with the aim of promoting competition and providing Canadian industry with opportunities for innovation.

The dynamic growth of telecommunications markets can be expected to continue in the near future with an expansion of the number of available products and services suitable as substitutes for the traditional offerings of the regulated telephone companies. This, in turn, can be expected to increase the pressures on regulators and policymakers to reassess current regulatory policies and move toward further expansion of the opportunities for competition in telecommunications markets.

The above developments are very important given the position of the telecommunications industry as one of the largest and most rapidly expanding sectors of the Canadian economy. Any new policies which affect the industry to a significant degree will comprise a major component of the nation's overall industrial policy over the next several decades and may have a

significant impact on the international competitiveness of Canadian businesses in many other sectors of the economy. This has substantial implications which go far beyond telecommunications-related matters to encompass concerns relating to job creation, balance of payments improvements and general economic growth. Given the significance of the issues for competition, the Director will continue to be actively involved in the various proceedings.

Transport

Transport is an important sector of the Canadian economy in terms of its value added and its contribution to the overall efficiency and international competitiveness of Canadian business. While traditionally much of this sector has been subject to economic regulation, over the past few years there has been pressure to redefine the boundary of regulation in the transport industries and increase the scope for competition. The pressures for change come from critical reviews of the application of historical rationales for restricting competition and free market forces in the present day, and from recognition of the negative effect on economic efficiency of excessive regulation. There has also been a demonstration effect from the deregulation movement in the United States. The Bureau has contributed to this literature through publications in the Monograph Series of the Economic Analysis and Policy Evaluation Branch.

In Canada, initiatives to review transport regulation are occurring at different degrees in air, surface and water modes.

At the request of the Minister of Transport, the Canadian Transport Commission (CTC) has embarked on a review of domestic air fare policy and, more generally, the regulation of entry and other policies affecting competition in the airline industry. Simultaneously, the Minister has initiated a comprehensive interdepartmental review of the economic regulation of the industry with a view to introducing a general liberalization of regulatory controls on competition. Both matters are expected to lead to important policy changes in 1984. The Bureau made a major intervention in the CTC review, as explained in Chapter VI, and has also played an important role with the interdepartmental task force.

With respect to the surface industries, action is taking place in trucking, busing and railways. The provinces have been delegated regulatory authority over trucking and busing. Most of the provinces are engaged in some form of regulatory review. Alberta, for example, has introduced policies to substantially liberalize entry in charter busing. Ontario is in the process of implementing reforms to its Public Commercial Vehicles Act and has set up a number of committees to coordinate the work. The Bureau expects to be invited to be a member of the Rate Issues Committee, examining rate filing and collective rate making.

Railways remain a federal responsibility. The Department of Transport has been engaged in a review of the legislative provisions allowing collective railway freight pricing. The Regulated Sector Branch commissioned an independent study of 300 rail users as part of its input to this review. The CTC will shortly be publishing studies on the effect of U.S. rail deregulation on Canada and a review of the regulations governing railway interswitching, which permits shippers access to competing railway carriers within certain geographic limits.

Finally, the major initiative in water has been the introduction in Parliament of a Bill to amend the Shipping Conferences Exemption Act, S-12, which would: (i) reduce the scope of conferences' exemption from the Combines Investigation Act, and (ii) introduce additional measures to encourage responsiveness to users by conference members. The Director participated extensively in the development of the Bill through interdepartmental discussions and consultations with select shipping companies and Canadian exporters.

Financial Markets

Traditionally, federal and provincial law has clearly segregated the activities of firms in the banking, trust, securities and insurance industries — the four pillars of the Canadian financial community. However, in recent years financial markets have experienced rapid and fundamental changes which increasingly challenge the validity of the four-pillar structure of the industry.

New technology in telecommunications and computerization has produced increased efficiencies for firms operating in financial markets and has made it possible for them to diversify into entirely new service areas. Many financial institutions which are faced with reduced growth in their traditional markets have recognized the new opportunities for expansion in other markets and, as a result, are urging the removal or loosening of the regulatory ties which have historically constrained their activities. Regulators and policymakers are now struggling to determine what regulatory and legislative changes may be required to allow financial markets to best adapt to the new environment.

In this regard, the past year was characterized by a number of notable developments. The Director participated in a hearing before the Ontario Securities Commission which led to the unfixing of brokerage rates in that province as of April 1, 1983. On the same date brokerage rates were also unfixed in the Province of Québec. The freedom to negotiate commission rates permitted the entry into the market of discount brokers, who were able to reduce rates for simple buy and sell orders by declining to offer the full range of investment services normally provided to investors by traditional brokerage houses. This development, in conjunction with provisions in the 1980 Bank Act which clarified the rules governing the participation of banks in securities-related activities, led the Toronto-Dominion Bank to enter into an agreement with a brokerage house to offer discount services to bank customers under its Green Line Investor Service (GLIS). The GLIS proposal was subsequently reviewed by the Ontario Securities Commission, in a proceeding in which the Director made representations, and was approved on condition that the Bank register as a discount brokerage access dealer and abide by the rules laid down for such dealers.

In Québec, the securities commission ruled that, in principle, it did not oppose either the ownership of securities dealers by financial institutions or the expansion of the activities of securities dealers into nontraditional areas of financial markets. While Ontario law and the federal Bank Act continue to prohibit financial institutions from holding major ownership positions in securities firms, each government has formed a task force to consider possible legislative changes in light of recent technological developments, deregulation in the United States and overlapping federal and provincial jurisdictions.

In other developments, the finance ministers of the federal and provincial governments have resolved to review the issue of federal/provincial jurisdiction in order to develop complementary rather than conflicting legislation affecting the financial industry, and a parliamentary committee has recommended that the current restrictions on the level of participation of foreign banks in the Canadian market should be reduced to permit a greater degree of competition from this source.

In the next several years, market forces can be expected to continue pushing the financial markets towards greater deregulation and an acceptance of a greater role for competition in the industry as a whole.

The Automobile Industry

(a) *Private Sector Automotive Task Force*

In November 1982, in response to concerns about the future development and health of the Canadian automotive industry, the Minister of Industry, Trade and Commerce and Regional Economic Expansion established a private sector Task Force for the purpose of reviewing the development, competitive environment and position of the Canadian automobile industry. The Task Force, composed entirely of representatives of the North American automobile manufacturers and United Auto Workers Union officials, was asked to make recommendations to assist the Minister in formulating policies to strengthen the industry.

In May of 1983, the Task Force submitted its report, which recommended increased government support for the industry in the form of financial assistance and increased protection from import competition in the form of a mandated domestic content scheme. This proposal required that all automobile suppliers selling in the Canadian market eventually obtain a Canadian value-added level of 60 per cent.

The Director places a great deal of importance on the beneficial role which Japanese vehicle imports have played in stimulating innovation in the North American vehicle market and in providing important competition in quality as well as in price. The imposition of a domestic content regime as onerous as that proposed by the Task Force would likely result in a substantial reduction in competition from Japanese vehicle manufacturers, thereby reducing pressure on the domestic industry to reduce costs, increase productivity and improve product quality. Substantial costs could be imposed on the Canadian consumer in the form of higher prices, reduced selection and absence of price discounting due to the reduction in competition.

During the year under review, the Director participated in the policy deliberations among officials regarding the proposed domestic content regime. The Director will continue to promote the benefits of competition in the automotive industry.

(b) *Voluntary Export Restraint Agreements*

During the period under review, the Government of Japan agreed to limit exports of automobiles to Canada to 153,000 units for the 12-month period ending March 31, 1984, the third such agreement between the Governments of Japan and Canada since April 1981. This export level represented a decrease of 18,000 units over the previous fiscal year, and in the presence of an expanding automobile market, the numerical ceiling served to substantially reduce the share of the Canadian market held by Japanese automakers.

The implications of this latest voluntary export restraint agreement (VER) for competition in the Canadian automobile market were of concern to the Director. The restraint of Japanese exports occurring during a period of increasing demand for such vehicles caused a substantial shortfall in supply, resulting in a significant reduction in consumer choice, particularly in the subcompact and compact segment of the vehicle market. Surveys conducted by the Director's staff of Japanese car dealerships across the country revealed that the VER had created a scarcity of product, a situation characterized by long waiting lists and delivery times of up to four months. As expected, the survey revealed that the short supply of Japanese vehicles occasioned by the VER enabled dealers to sell readily their entire allotment of vehicles, particularly subcompact and compact models, thereby eliminating the need for dealers to promote the sale of these vehicles on the basis of price competition. In addition to rendering competitive rivalry among Japanese car dealers ineffective, the VER also reduced competition between Japanese and North American car dealers, particularly with respect to the sale of lower-priced subcompact and compact economy vehicles. Most notably, almost all Japanese vehicle dealers surveyed had ceased the traditional competitive practice of discounting from suggested list prices or adding options at reduced or no cost.

An analysis of Japanese vehicle import data also disclosed a shift in the vehicle product mix towards more expensive luxury and sports models, and models loaded with options, reflecting the desire of the Japanese automakers to compensate for the reduced sales volumes by maximizing the profit per vehicle. This shift further exacerbated the shortages of lower-priced subcompact and compact economy models, forcing many consumers at the low end of the market to forgo their purchases or choose among a smaller offering of alternatives which enjoy lesser consumer preference.

The curtailment of Japanese vehicles, and in particular lower-priced economy models, undercut the important role which the Japanese automakers have played in restraining the prices of comparable domestic vehicles. Removal of this downward pressure on the prices of North American built vehicles, together with the introduction of upward pressure on the prices of Japanese vehicles caused by the scarcity, imposed economic losses on Canadian consumers.

Although it is recognized that temporary restraints on imports which are not overly restrictive can, in certain circumstances, serve a beneficial role in giving domestic manufacturers time to adjust to dramatic changes in the international competitive environment, the granting of long-term protection to an industry can serve to inhibit the process of restructuring to meet the changed conditions. The competitive position of the North American automobile

industry has improved greatly since the introduction of the first VER agreement in 1981 largely as a result of the industry's efforts to increase productivity and improve product quality. It is apparent that the domestic industry's recent restructuring process has been a direct response to the competitive threat of the Japanese automobile manufacturers, and it is unlikely that this process would be occurring to the same extent in the absence of the Japanese presence in the market.

The industry's restructuring process to date, together with the market recovery, has enabled the industry to presently enjoy record profits and greatly increased sales. The industry is now better positioned to continue the process of restructuring in order to narrow its competitive cost and quality disadvantage. To extend the restraints on Japanese imports, in the presence of continued market recovery, could serve to attenuate the pressures on the industry to continue the process of adjustment, thereby adversely affecting the long-term competitive position of the industry.

It is essential that the objective of protecting the industry in the near term through future restraints be carefully weighed against the immediate costs which the restraints impose on consumers and also against the longer-term impact on the dynamic efficiency of the automotive industry and the economy as a whole.

2. Statistics

Table I presents a statistical picture of the work of the Bureau of Competition Policy during the past year in comparison with other years, excluding work related to misleading advertising and deceptive marketing practices. On receipt of each complaint of substance or inquiry in the nature of such a complaint, a file is opened, and the number of such files is the figure that appears in the table as Item 1. Some complaints give rise to very little inquiry; other cases require more attention but are discontinued at an early stage because, for lack of evidence or other reason, they do not appear to justify further inquiry. Item 2 inquiries are initiated under sections 7 and 8 of the Act by formal application of six persons. Item 3 refers to inquiries in which powers to search, to secure information or to examine witnesses have been used. Items 4 to 8 are self-explanatory.

Item 9 includes only those representations made formally by the Director under section 27.1. Item 10 includes all other representations in the nature of interventions such as representations to provincial regulatory bodies.

During the year ended March 31, 1984, 57 cases under the Act (excluding misleading advertising and deceptive marketing practices cases) were considered by the courts. These consisted of 16 proceedings commenced during the year, and 41 proceedings before the courts from previous years. Ten cases related to conspiracy under section 32, including two that also involved a charge under section 33 and two that also involved a charge under section 38; three related to bid-rigging under section 32.2; two related to price discrimination under section 34; 40 related to price maintenance or refusal to supply under section 38; and there were two cases under section 41. Twenty-two proceedings were concluded during the year and a total of $416,500 in fines was imposed. Three of the concluded proceedings related to section 32, including one involving additional charges under section 33; one to section 32.2; 17 involved price maintenance; and one involved impeding an inquiry under section 41. These proceedings are listed in Appendix II showing the products involved, persons charged, the place of trial and details of disposition.

Statistics of the work relating to misleading advertising and deceptive marketing practices are presented in Chapter VII. During the year ended March 31, 1984, 332 misleading advertising and deceptive marketing practices cases were considered by the courts. These consisted of 163 proceedings commenced during the year and 169 proceedings before the courts from previous years. This includes 20 cases that had received court consideration in previous

fiscal years but were under appeal at the start of the year. There were 183 proceedings concluded during the year, 139 of which resulted in convictions and 44 in acquittals, charges withdrawn and other completions of court proceedings that were not convictions. Fines totalling $1,654,640 were imposed during the year and an additional $108,190 in fines was under appeal at the end of the year.

Table I

OPERATIONAL ACTIVITIES OF THE BUREAU OF COMPETITION POLICY (EXCLUDING MISLEADING ADVERTISING AND DECEPTIVE MARKETING PRACTICES PROVISIONS)

	1974-75	1975-76	1976-77	1977-78	1978-79	1979-80	1980-81	1981-82	1982-83	1983-84
1. Number of files opened	84	158	143	173	205	262	238	249	256	205
2. Formal applications for inquiries	5	4	7	5	7	7	8	9	8	2
3. Formal inquiries in progress at the end of the year	81	71	73	76	73	78	69	69*	71	58
4. Inquiries disposed of by reports of discontinuance to the Minister	13	14	8	14	16	21	26	20	19	19
5. Inquiries referred direct to the Attorney General of Canada under section 15	11	18	26	23*	14	24	21	33*	24	20
6. Inquiries closed on the recommendation of the Attorney General of Canada	2	2	4	6	6	3	5	6	5	6
7. Prosecutions or other proceedings commenced	7	12	16	24	11	21	6	24	21	16
8. Applications under Part IV.1	—	—	—	1	1	2	0	0	1	0
9. Formal interventions under section 27.1	—	—	3	4	0	3	4	6	4	15
10. Other representations to bodies dealing with regulatory change	—	—	1	1	2	1	0	9	7	8

*Revised

3. Decisions, Reports and Other Matters of Special Interest

(1) *Charter of Rights and Freedoms*

The Charter of Rights and Freedoms has had a considerable impact upon enforcement activities under the Combines Investigation Act, particularly at the investigation stage. Both the power of search and seizure and the power to compel witnesses to attend for examination under oath have been vigourously challenged on the basis of rights and freedoms articulated in the Charter. In addition, the issues of presumed innocence, pre-charge delay, and retrospectivity have been given some consideration by the courts in Combines cases during the year.

Several developments have taken place with respect to the powers of search and seizure under the Act. The Alberta Court of Appeal decision in *Southam Inc. v. Hunter et al.*,[1] which struck down section 10 of the Act on the basis that it contravened the right to be secure against unreasonable search and seizure, was appealed to the Supreme Court of Canada. Argument was heard on November 23 and 24, 1983, but no decision has yet been rendered. One of the key issues is the extent to which procedural safeguards must be specified in a provi-

sion which grants a power to search premises and seize documentary evidence. At present, subsection 10(3) of the Act grants to members of the Commission a discretionary power to authorize entry but does not set out precise guidelines for the exercise of this power.

Several searches which were undertaken in provinces other than Alberta prompted further challenges based on the Charter's guarantee against unreasonable search and seizure. In three instances, applications were made to the Federal Court — Trial Division, for relief. On June 2, 1983, Mr. Justice Walsh dismissed an application for prohibition in *Helix Investments Ltd. et al. v. Hunter et al.*,[2] on jurisdictional grounds, but noted that "the making of a search [was] far from being a final step by which any right [was] being in any way determined," and that even if injunctive relief had been sought, the balance of convenience and the question of irreparable injury would have been "strongly in favour of respondents." One month later, Mr. Justice Collier quashed section 10 certificates and halted searches in *Thomson Newspapers Limited et al. v. Hunter et al.*,[3] relying on and adopting the unanimous judgment of the Alberta Court of Appeal in *Southam*. Finally, in an October 1983 ruling on a similar application in the case of *A.C.L. Canada Inc. et al. v. Hunter et al.*,[4] Associate Chief Justice Jerome concluded that "it is in the interests of the orderly administration of justice that this matter be adjourned." The motion stands adjourned until such time as either the Federal Court of Appeal rules on the appeal in *Thomson* or the Supreme Court of Canada renders its decision in *Southam*.

Because of growing uncertainty with respect to the use of section 10, the Director has decided to proceed with the use of search warrants obtained under section 443 of the Criminal Code in inquiries involving criminal matters. However, this process is not available in Part IV.1 matters, which are presently proceeding without the benefit of section 10 of the Act.

Cases involving pre-Charter searches have met with mixed success when brought forward to preliminary hearing or trial. At preliminary hearings in the *Hogs*[5] and *Soft Drinks Manitoba*[6] cases, the courts in each case chose, based on *Southam*, to exclude documentary evidence, thereby giving retrospective effect to section 8 of the Charter. In the *Pharmacists* case,[7] Madame Justice Van Camp admitted into evidence documents obtained during pre-Charter searches, ruling that there cannot be a breach of section 8 of the Charter prior to its enactment. She noted that, even if there could be such a breach, she would exercise her discretion and admit the documents under subsection 24(2) of the Charter, since the circumstances of the combines search had not been so shocking or disturbing as to bring the administration of justice into disrepute.

The powers to compel attendance of witnesses and production of documents under section 17 of the Act have also been the subject of challenge in the past year. While subsection 20(2) of the Act provides protection against self-incrimination to those who are compelled to give evidence, the issue as to the extent to which the Charter and the Bill of Rights give additional protection was dealt with by the Federal Court in the *NHL* inquiry. Both the Trial Division[8] and the Court of Appeal[9] concluded that the privilege against self-incrimination did not extend to either compelled production of documents or derivative evidence and that the protection contemplated by section 13 of the Charter was found in both section 5 of the Canada Evidence Act and subsection 20(2) of the Combines Investigation Act. Even though Mr. Justice Marceau found that the subpoenas *duces tecum* were "seizures" within the meaning of section 8 of the Charter, he concluded that, given the nature of the combines inquiry and the fact that all of the documents in question were corporate records, the subpoenas were not unreasonable.

Two days after the Federal Court of Appeal decision in the *NHL* case, the Saskatchewan Court of Queen's Bench came to a different conclusion in the *Business Forms* case,[10] holding that section 17 of the Act was of no force and effect, because it violated the applicant's right to be protected from self-incrimination under section 7 of the Charter. The Court concluded that "the public interest in orderly competition is not so compelling as to override [such a] serious interference with the right to liberty and security." The *Business Forms* decision is under appeal; leave to appeal the *NHL* decision to the Supreme Court of Canada was denied.[11]

The presumption of innocence in paragraph 11(d) of the Charter has formed the basis for several challenges to sections of the Act containing evidentiary presumptions, or "reverse onus" clauses. In the *Pharmacists* case, *supra*, the court held that subparagraph 45(2)(c)(ii) did not place upon the accused the burden of establishing any essential element of the offence; hence, it was not invalid by reason of paragraph 11(d) of the Charter. In the *Business Forms* case, *supra*, the court ruled that section 45 did not contain mandatory presumptions and, therefore, should not be treated in the same way as a reverse onus clause for the purpose of paragraph 11(d). However, in *R. v. 356433 Ontario Ltd. and Hamel*,[12] an Ontario Provincial Court ruled that the "adequate and proper test" defence in paragraph 36(1)(b) was a "technical breach" of section 11 but that the presumption was reasonable, therefore constitutional, by virtue of section 1 of the Charter. In contrast, a Saskatchewan Provincial Court ruled in *R. v. Westfair Foods Ltd.*[13] that the "due diligence" defence in subsection 37.3(2) of the Act violated paragraph 11(d) and section 7 of the Charter, and was not demonstrably justified in a free and democratic society. The *Westfair* decision is under appeal.

A number of cases approaching the preliminary hearing stage have faced motions to quash based on the argument that delay in laying of the charge violated an accused's right to be tried within a reasonable time (paragraph 11(b) of the Charter). The motions were denied in all cases, since the prevailing view is that the relevant time period for the assessment of delay starts with the laying of the charge. Nevertheless, one such denial[14] is under appeal, and the minority view that pre-charge delay has a role to play in assessment of delay under paragraph 11(b) of the Charter may become an increasingly important factor in enforcement activities within the Bureau.

There is no doubt that the Charter has had a dramatic effect on investigation and enforcement activities in the past year; delays have been, and are expected to be, more extensive than originally anticipated. The decision in the *NHL* case and the Supreme Court decision in *Southam*, when it is rendered, will relieve much of the uncertainty that has surrounded activities in the past year. On the other hand, since new issues have given rise to sufficient disagreement as to the merits in each case, it is expected that successive appeals will be necessary for clarification of the law in this area.

(2) *Other Constitutional Issues*

As stated in Chapter II of the 1983 Annual Report at page 13, in *Re Canadian Pacific Transport Co. et al. and Provincial Court of Alberta et al.* and *Re Canadian National Transportation Ltd. et al. and Provincial Court of Alberta et al.*, the Alberta Court of Appeal recognized the exclusive authority of provincial attorneys general to prosecute offences under paragraph 32(1)(c) of the Combines Investigation Act. In a judgment pronounced on October 13, 1983,[15] the Supreme Court of Canada set aside the decision of the Alberta Court of Appeal and held that it was within the competence of the Parliament of Canada to enact legislation, as in subsection 15(2) of the Combines Investigation Act, to authorize the Attorney General of Canada or his agents to prefer indictments and conduct proceedings in respect of alleged violations of section 32 of the Act.

The Chief Justice, with whom Ritchie J., Estey J. and McIntyre J. concurred, relied heavily on the reasons of the Ontario Court of Appeal in the *Hoffmann-LaRoche* case[16] in concluding that, as the constitutional validity of the Combines Investigation Act depends on the criminal law power of the B.N.A Act, it is within the legislative competence of Parliament to authorize the Attorney General of Canada to prefer indictments and conduct prosecutions in respect of violations of that Act.

In finding that the constitutional validity of the Combines Investigation Act depends on the federal trade and commerce power, Dickson J. (as he then was) reiterated the rule in *Parsons*,[17] which declared that the federal trade and commerce power includes general regulation of trade affecting the whole dominion but does not extend to regulating the contracts of a particular business or trade. Dickson J. referred to various indicia which would permit a better characterization of any such general regulation:

(1) the presence of a regulatory scheme;

(2) the oversight of a regulatory agency;

(3) a concern with trade in general rather than with an aspect of a particular business;

(4) the constitutional inability of the provinces to pass jointly or severally such an enactment; and

(5) the failure to include one or more provinces or localities, thereby jeopardizing successful operation in other parts of the country.

Beetz and Lamer JJ. shared the views of Dickson J. to the effect that paragraph 32(1)(c) of the Combines Investigation Act had been validly enacted by Parliament under its authority to make laws in relation to trade and commerce pursuant to subsection 91(2) of the Constitution Act. The minority decision would seem to lend support to the proposition that the civil provisions of the Act are constitutional based on the federal trade and commerce power.

In the ***BBM*** case,[18] the Federal Court of Appeal, in a unanimous decision delivered by Urie J., followed the reasoning of Dickson J. in the above case.

The issue before the Federal Court of Appeal was whether Part IV.1 of the Combines Investigation Act, and in particular section 31.4, was ultra vires as being legislation in respect of property and civil rights within the provinces under section 92(13) of the Constitution Acts 1867-1982.

Urie J. was of the opinion that section 31.4 met all of the above criteria referred to by Dickson J. and was, without more, valid federal legislation under the trade and commerce power of the Constitution Act, 1867 (section 91(2)). He indicated that the provision, when read in context with the other provisions of the Act, was clearly part of a complex regulatory scheme, not aimed at a particular business or industry but at the general regulation of trade and commerce throughout Canada for the benefit of Canadians in general.

(3) *Intent in Conspiracy Prosecutions*

Recent court decisions in conspiracy cases have led to some confusion respecting the issue of intent. Ambiguity in the *Aetna Insurance*[19] and *Atlantic Sugar*[20] judgments allowed an interpretation that, to complete a conspiracy charge, the Crown must show not only that the accused intended to enter into an agreement, but also that they intended to lessen competition unduly. This "double intent" test placed a greater onus on the prosecution than in the past, where, based on *Container Materials*[21] and *Anthes Business Forms*[22]the Crown need only show that there was an intention to enter into an agreement which, *if* carried into effect, would lessen competition unduly. This latter test has become characterized as "single intent."

The issue was argued before the Supreme Court of Ontario in the daily newspapers prosecution, more fully described in Chapter V. In this case, the Crown argued that the accused had entered into and carried into effect agreements whereby one supplier of daily newspapers would absent the market, leaving the other paper as the sole supplier. While the accused companies were acquitted by the Court, mainly on matters of fact, Mr. Justice Anderson clearly rejected the concept of "double intent." In his ruling of October 28, 1983, on the motion for a directed verdict, he stated:

> It was contended on behalf of the accused that this measure of [single] intent can no longer be considered to be the law in the light of the decision in *Regina v. Atlantic Sugar* and in *Aetna*. I have considered those cases and cannot take from them any clear conclusion which leads me to hold that the test as defined by Houlden J.A. in *Anthes* is no longer accurate. Indeed, in the decision of Ritchie J. we find the following at page 169 of *Aetna*:
>
> > "The burden lying upon the Crown in this case is to establish beyond a reasonable doubt first that the respondents intended to enter into a conspiracy, combination, agreement or arrangement and secondly, that that conspiracy, combination, agreement or arrangement *if* it were carried into effect would prevent or lessen competition unduly."

It is this test as enunciated in *Anthes* which I have applied in the conclusions which follow.[23]

Thus, the test of "single intent" was affirmed and applied by the Court in the three counts under paragraph 32(1)(c) in this prosecution.

To remove the conflict between the two tests, a provision has been included in the proposed amendments to the Act which states that, in a prosecution under section 32, it is not necessary to prove that the accused intended to lessen competition unduly.

(4) *Crown Immunity in Combines Prosecutions*

The Supreme Court of Canada, in a majority decision on December 15, 1983,[24] dismissed an appeal from a decision of the Ontario Court of Appeal (*Regina v. Uranium Canada Ltd./Ltée)*[25] which held that Uranium Canada Limited and Eldorado Nuclear Limited are immune from prosecution under the Combines Investigation Act. Following the decision, the government instituted a stay of proceedings against the private sector accused, namely Denison Mines Ltd., Gulf Canada Minerals Ltd., Rio Algom Ltd. and Uranerz Canada Ltd. In a statement issued on December 20, 1983, Justice Minister Mark MacGuigan said that since the Crown companies could not be prosecuted, it would be unfair to prosecute the private companies.

The majority judgment was delivered by Mr. Justice Dickson, with Chief Justice Laskin and Justices Ritchie, Beetz and Chouinard concurring. Madame Justice Wilson dissented in part, with Mr. Justice McIntyre concurring, holding that Uranium Canada but not Eldorado Nuclear was immune from prosecution.

The two Crown companies were among those charged in 1981 under paragraph 32(1)(c) of the Act in connection with an alleged uranium cartel. They applied successfully to the Supreme Court of Ontario for writs of prohibition against a provincial court judge ordering him not to proceed with a preliminary inquiry into the charge against them because they were agents of the Crown and the Act did not apply to them.

Dickson J. (as he then was) dealt first with whether the Combines Investigation Act binds the Crown. He held that it does not because the Act does not purport to do so and because section 16 of the Interpretation Act provides that "no enactment is binding on Her Majesty or affects Her Majesty or Her Majesty's rights or prerogatives in any manner, except only as therein mentioned or referred to."

He then pointed out that if Uranium Canada and Eldorado Nuclear enjoy Crown immunity, they can have committed no offence under the Combines Investigation Act. He added that Crown agents benefit from Crown immunity because they are acting on behalf of the Crown. As to whether the two companies were acting as agents, he concluded that both were, by statute, expressly made an agent of Her Majesty.

He then described the extent of the immunity as follows:

> When a Crown agent acts within the scope of the public purposes it is statutorily empowered to pursue, it is entitled to Crown immunity from the operation of statutes, because it is acting on behalf of the Crown. When the agent steps outside the ambit of Crown purposes, however, it acts personally, and not on behalf of the state, and cannot claim to be immune as an agent of the Crown. This follows from the fact that section 16 of the Interpretation Act works for the benefit of the state, not for the benefit of the agent personally. Only the Crown, through its agents, and for its purposes, is immune from the Combines Investigation Act.

Dickson J. then drew a distinction between: (i) acts committed in the course of fulfilling Crown purposes but in no way undertaken in order to effect Crown purposes, and (ii) acts committed which are designed to effect Crown purposes. Only the latter invoke Crown immunity.

Against this background, he asked the question whether the conduct specified in the indictments against Uranium and Eldorado fell within the purposes of those two corporations. He concluded that:

> Absent some indication that the Companies acted outside corporate objects for other than Crown purposes, they are immune from the terms of the Combines Investigation Act as agents of the Crown, and the Provincial Court Judge lacked jurisdiction to inquire into the charges.

Madame Justice Wilson agreed that the Crown is immune from prosecution under the Combines Investigation Act by virtue of section 16 of the Interpretation Act, but she differed from the majority in respect of the immunity of Crown agents. She was of the view that an agent could claim Crown immunity when the purpose for its acts and the means it uses are authorized, either explicitly or impliedly; but, if no such authorization exists, then the court must determine the degree of *de jure* control that the Crown is able to exercise over the agent, which basically makes the agent the alter ego of the Crown.

Following her two-step approach, Madame Justice Wilson held that, in the absence of a factual inquiry, neither respondent could assert Crown immunity under the test of express or implied authorization. She agreed that Uranium Canada, but not Eldorado Nuclear, could meet the second test of being the alter ego of the Crown.

The Supreme Court decision recognized that Crown immunity "seems to conflict with the basic notions of equality before the law." To address this problem, the proposed amendments to the Combines Investigation Act include a provision stating that federal and provincial agent Crown corporations engaged in commercial activities in actual or potential competition with privately owned firms or other corporations are subject to the provisions of the Act.

(5) *Buying Groups*

During the past year, the Director has continued to study the issue of buying groups and the application of the provisions of the Act to their activities. The Director and members of his staff have delivered a number of speeches to groups and associations in which the Director's views and policy in dealing with the various issues are outlined. As part of this process, the Director has consulted extensively with persons and companies affected by and concerned about the evolution of buying groups. In addition, under the program of compliance, he has provided both advice and opinions to businesses concerned about the application of the Act to particular situations. While the provisions of sections 32 (conspiracy) and 34 (price discrimination) have raised the most concern, it is recognized that the provisions of sections 33 (merger and monopoly) and 38 (price maintenance) may have possible application to buying group situations.

Although buying groups have been in existence for many years, it is only recently that there has been a dramatic increase in their number and size. Public awareness and concern over this phenomenon has been awakened by press articles covering recent developments in the grocery industry. This concentration of buying power in the food industry and elsewhere is at the heart of the Director's concern regarding buying groups.

Traditionally, buying groups have enabled smaller purchasers to compete with larger purchasers on an equal footing. The scale of the groups that are now emerging, however, provides the potential for the aggressive exercise of enormous buying power as well as the potential for anticompetitive behaviour. If the current trend in the growth in size of buying groups continues unabated, the resultant concentration of buying power could have serious consequences for competition in Canadian industry. At the present time the primary areas of concern with respect to buying group activities involve issues under sections 32 and 34. Section 32 makes it a criminal offence to make an agreement which lessens competition unduly, in the *purchase of a product* as well as in production, sale, supply or other activities. Buying groups, by their very nature, are agreements whereby the members have agreed to pool their purchases. This lessens competition in the purchase of products by bringing two or more previously independent and

competing purchasers together to act as one. It would then be necessary to determine whether this agreement constituted an *undue* lessening of competition in the purchase of a product. This would be determined by first defining the relevant market which might be found to be local, regional or national, depending on the circumstances of each case. It would then have to be determined what proportion of the supplier's products in that market go through the buying group in order to reach the ultimate consumer.

A further concern in this regard is that membership in a buying group could facilitate collusion in areas other than the actual purchasing of product, for example, the exchange of price information and coordination of promotional programs.

The price discrimination provision of paragraph 34(1)(a) requires sellers, as a practice, to charge competing purchasers the same price for like quantities of like-quality goods. The wording of the provision allows small buyers to take advantage of volume rebates offered by their suppliers by purchasing through the intermediary of a buying group, provided that the buying group is a legitimate "purchaser" eligible for such rebates.

There are three features which the Bureau stresses should be present in order that a buying group could be termed a true purchaser. First, a group must be a legal entity which buys from suppliers. Although a buying group may appoint its members as agents to order and make payments on its behalf, the buying group must acquire property interest in the goods from suppliers and must accept responsibility for payment. This does not mean that it must take delivery of the goods but it should maintain proper business records in order to substantiate its buying activities.

Second, after buying the goods, the group must then sell them to its members in a separate transaction. This dual transaction of buying and reselling is vital to the characterization of the group as a lawful intermediary engaged in purchasing activities on behalf of its members. The group itself should be the recipient of the earned volume rebates, which it should then redistribute to its members.

The third major criterion relates to the issue of credit guarantees and attempts to limit liability. It is the Bureau's view that a group cannot attempt to limit or qualify its legal responsibility for payment of debts incurred in its name. In addition, it is important that the group satisfy suppliers that it has the *ability* to meet any debts incurred in its name. It is not necessary that each member of the group accept full responsibility for the group's *total* indebtedness, but the group itself is responsible for ensuring that it is able to meet its obligations to its suppliers, particularly in the event of the default of one of its members.

The question of the extent and nature of a *member's* liability can be a crucial consideration with respect to the *group's* ability to meet its obligations in light of paragraph 34(1)(a). If a buying group has not in any way limited its liability and clearly has on hand sufficient assets or other means to meet the obligations to its suppliers in the event of the default of one or more of its members, it would likely be acceptable for the members to limit their liability. However, if a group has limited its liability and has no adequate means to meet its obligations, the Director is of the view that members could not, in such circumstances, limit their responsibilities solely to their own purchases within the group.

The Director has had occasion to deal with a third possibility — a buying group which has not limited its liability for payment of debts but is not in the fortunate position of having on hand sufficient assets to cover the default of one or more of its members. In such a situation the Director advises that the buying group and its members should establish a mechanism by which the group may satisfy its suppliers, should one or more members default on payment to the group.

From the above comments about price discrimination, it will be evident that proper and complete records ought to be maintained by suppliers inasmuch as section 34 is directed against pricing activities by *suppliers*. The actions of buying groups and other buyers, however, may warrant examination in relation to the Criminal Code provisions dealing with aiding and abetting in or counselling the commission of a criminal offence.

The emergence of buying groups with considerable potential market power has led the Bureau of Competition Policy to take a new look at buying groups and their relationship to the provisions of the Combines Investigation Act. The information obtained from a wide variety of sources has made it apparent that the issues involved are myriad and complex. As such, they may require examination in a more general, comprehensive and public fashion.

Sellers, buying groups and buyers contemplating the formation of buying groups are encouraged to consult with the Director pursuant to the program of compliance, as outlined in Chapter I.

(6) *Representations Related to Mortgage Renegotiation*

During the year, hundreds of Canadian homeowners complained to the department about problems encountered with financial lending institutions in obtaining mortgages and mortgage renewals. Many of the complainants alleged that the staff of these institutions had made representations to them during the 1981-82 period of very high interest rates, to the effect that mortgages could be renegotiated with the payment of a three-month interest penalty.

It had been the informal policy of many lending institutions to allow such renegotiation in certain cases even though the mortgage contract, on its face, denied the privilege. When interest rates declined substantially in late 1982, mortgagors' attempts to renegotiate their mortgages at this increasingly more acceptable penalty rose sharply as would have the costs to mortgagees of allowing the renegotiation. Lending institutions generally, therefore, discontinued this renegotiation policy. For those mortgagors willing to pay higher renegotiation penalties, it significantly increased the costs of the penalty on subsequent renegotiation.

Every complaint containing an allegation of misrepresentation was examined by the Director's staff in the Marketing Practices Branch. However, in no case was sufficient evidence obtained to justify a referral to the Attorney General for the consideration of a prosecution under paragraph 36(1)(a) of the Act. In most cases, complainants were unable to identify the persons alleged to have made the representation and/or to remember the precise circumstances in which the alleged representations were made. In no case were complainants able to provide documentary substantiation to support an allegation. It was admitted by one company that employee error might have caused the alleged representations to have been made in a few cases. Through its own internal review process this company has allowed complainants to renegotiate their mortgages with the three-month penalty if they filed adequate evidence of the representation. Other companies are also employing internal review procedures. Because of these factors, the Director did not believe it would be possible to convince a criminal court that an offence had occurred in relation to any of the incidents he reviewed during the year.

The Director continues to examine thoroughly all similar complaints to determine if prosecution is warranted in any case.

(7) *Canada/U.S. Memorandum of Understanding*

A Memorandum of Understanding concerning the application of U.S. and Canadian antitrust laws in situations in which the interests of both countries are affected was signed on March 9, 1984, by the Honourable Judy Erola, Minister of Consumer and Corporate Affairs, William French Smith, U.S. Attorney General, and James C. Miller III, Chairman of the Federal Trade Commission. The new understanding, which supersedes previous bilateral agreements in this area, provides a framework for improved and expanded cooperation between the two countries in antitrust matters and establishes notification and consultation procedures to be followed by each country when its antitrust enforcement activities affect the jurisdiction or public interest of the other.

Either government may request consultations aimed at eliminating or minimizing conflicts. Each government will refrain from pursuing antitrust proceedings until there has been an opportunity for consultation. In addition, the two governments will cooperate in the enforcement of antitrust laws by exchanging information to the extent consistent with national laws and interests, and subject to assurances respecting confidentiality. (The Memorandum appears as Appendix IX to this Report.)

4. Remedies under the Combines Investigation Act

(1) *Fines as a Means of Deterrence*

The costs imposed on the economy and consumers by the commission of an offence under the Act and the costs of detecting offences and enforcing the law are quite large. A major goal of the Bureau of Competition Policy is therefore to induce the business community to comply with the law, and deterrence is viewed as an important aspect of this goal.

To deter violations of the Act, the expected benefits from engaging in the prohibited activity must be less than the expected costs. The most obvious potential cost is the fine imposed on conviction under the Act. However, this cost may be insignificant when compared to lawyers' fees, lost managerial time, adverse publicity and the other costs associated with being investigated and prosecuted.

The Bureau of Competition Policy strives to have penalties imposed such that firms which have engaged in illegal activity and others considering similar actions are deterred from violating the Act. In assessing an appropriate level of fine, the Bureau reviews the economic cost of an offence, including the duration of the offence, the size of the market, the number of parties affected and the extent and nature of the damages caused.

Recently, the courts have signaled their willingness to impose larger fines in order to increase the expected costs to firms engaged in illegal activity and thereby deter future violations. This is particularly evident in the *Simpsons-Sears* misleading advertising case,[26] in which the presiding judge actively considered some of the economic cost arguments put forward by the Director and imposed a fine of $1 million.

The following table indicates (in current dollars) the increasing trend in average fines levied in conspiracy (including bid-rigging offences), price maintenance and misleading advertising cases.

Period	Number of cases with fine only	Number of cases with fine & P.O.	P.O. only	Total cases	Total fines (all cases)	Avg. fine per case (all cases)*
Conspiracy						
1960-69	5	15	3	23	$1,149,800	$ 57,490
1970-74	1	7	3	11	851,950	106,494
1975-79	1	6	3	10	1,220,900	174,414
1980-84	3	4	0	7	1,483,000	211,857
Price Maintenance						
1960-69	2	5	5	12	$ 15,750	$ 2,250
1970-74	4	7	1	12	64,250	5,841
1975-79	16	13	5	34	517,500	17,845
1980-84	23	1	2	26	519,000	21,625

Period	Number of cases	Total fines	Avg. fine per case
Misleading Advertising			
1976-77	87	$ 121,687	$ 1,399
1977-78	89	142,140	1,597
1978-79	119	222,575	1,870
1979-80	102	378,380	3,710
1980-81	107	369,950	3,457
1981-82	94	225,132	2,395
1982-83	121	610,775	5,047
1983-84	139	1,654,640	11,904

* Does not include cases where only a Prohibition Order (P.O.) was issued

This table also indicates that fines imposed are often accompanied by orders prohibiting certain types of business practices. Such orders are aimed toward increasing competition and

improving consumer welfare in the future. Fines in such cases may be lower than what would otherwise be imposed by the courts or may not be sought.

For example, in the case of *Used Household Goods*,[27] the court levied a relatively small fine ($250,000 for five firms) but coupled it with a comprehensive and far-reaching Prohibition Order. In the circumstances, the order is far more effective in remedying the anticompetitive effects of the conspiracy than any fine could be (see item (2)).

(2) *Order of Prohibition — The Transportation of Used Household Goods*

On December 15, 1983, Canada's five major van lines and their tariff bureau pleaded guilty to conspiring to lessen competition unduly in the interprovincial transportation of used household goods within Canada during the period 1963-1980.

Following their guilty pleas, the five companies were fined a total of $250,000 and were issued with a comprehensive Order of Prohibition by the Ontario Supreme Court.

The Order of Prohibition in this case established a precedent in terms of the strength of the provisions aimed at preventing industry collusion, the elimination of an industry tariff bureau, and the monitoring and educational provisions designed to ensure compliance with the Prohibition Order.

Although the charge in this case specifically related to joint van line action, the Prohibition Order dealt with certain intra-van line activities as well as the joint van line conduct. Since van lines controlled not only rates but also the product offered by its agents through the van line-agency agreement, the number of competitors in interprovincial moving in Canada was effectively reduced from more than 500 authorized carriers (i.e., the number of van line affiliates) to five van lines. To introduce competition back into an industry which had been subject to a 17-year conspiracy, it was imperative that van line agents be given a greater degree of independence with respect to price and product competition. As a result, the Prohibition Order included specific provisions giving this flexibility to van line agents.

The Prohibition Order directed that the Canadian Household Goods Carriers' Tariff Bureau Association cease operation as of December 31, 1983. This is a particularly important precedent in view of the widespread use of tariff bureaux in all sectors of the Canadian trucking industry. This example will undoubtedly have a significant impact not only on trucking firms, but also on policymakers and regulators in deciding the role of tariff bureaux in Canada's trucking industry.

The monitoring and educational provisions incorporated in this order provide the Director with significantly more tools to ensure compliance with a prohibition order than in any previous order. The monitoring provisions require, among other things, that the van lines allow the Director, or his representatives, on 24 hours' notice, access to their premises for the purpose of examining documentation, in cases where the Director is not satisfied with any requested information submitted to him by the van lines, for the purpose of monitoring compliance with the order. The educational provisions require that the van lines inform both van line executives and van line agents of the requirements of the Combines Investigation Act in general, and of the Prohibition Order in particular, and indicate to their executives and agents that noncompliance with either the Act or the Order would result in appropriate disciplinary action, including termination of employment or cancellation of the agency contract. The educational provisions also allow the Director or his representatives an opportunity to address an assembly of each van line's officers and directors annually for the next six years.

(3) *Undertakings with Major Motion Picture Distributors*

In the past year, the Director and Canada's major motion picture distributors negotiated a package of undertakings designed to make film distribution and exhibition more competitive in Canada. These undertakings represent an interesting example of the type of remedies that can be achieved in an inquiry under the Combines Investigation Act.

For decades, the Director of Investigation and Research has received complaints concerning anticompetitive practices in the motion picture industry. These complaints have ordinarily come from independent exhibitors who have experienced difficulties in obtaining supplies of commercially valuable motion pictures. Among other things, it has been alleged that the major American distributors operating in Canada supplied motion pictures exclusively, or on the basis of a right of first refusal, to one or both of the major exhibitor chains. These complaints led to a number of inquiries, including one commenced in 1976 which ultimately led to the Director's application to the Restrictive Trade Practices Commission in 1982 for an order against seven major distributors to supply Cineplex Corporation. (See Chapter V of this Report and pages 51 to 52 of the 1983 Report.)

Prior to the commencement of hearings on the Director's application, the distributors and the Director negotiated a series of undertakings with respect to motion picture distribution in Canada. As a result of the undertakings, the Director agreed to an adjournment of the hearing on his application for 12 months. Among other things, the distributors undertook to make meaningful and significant changes in their method of film distribution and, in particular, to implement a system of film-by-film and theatre-by-theatre distribution.

Although the undertakings arose from an application with respect to one exhibitor, it was the intention of the Director and the distributors that they would apply for the benefit of all exhibitors across Canada. As a result of the various complaints the Director had received over the years, it was possible to take the complainants' concerns into account in negotiating the undertakings. Also, considerable effort was made to seek input from these exhibitors during the period while the undertakings were in effect. While the settlement depended in large part on the good faith of the distributors, the undertakings provided monitoring mechanisms for the Director to obtain information on film licensing decisions and to examine the records of the companies on three days' notice. The undertakings also provided that the Director could bring his application back on for hearing at any time on four weeks' notice. While the effectiveness of the undertakings in this case was still to be assessed at the end of the fiscal year, it was apparent that the approach had had a number of benefits.

First, the settlement provided an opportunity to address the competition issues affecting the industry as a whole while an order would have been limited to addressing the problems of one company. In this case, the Director has received complaints from other independent exhibitors which may ultimately lead to applications with respect to those companies.

A second benefit is that negotiations between both sides allowed for a more practical and flexible resolution than might have resulted from an order. The undertakings provided that a distributor could still make his licensing decisions on the basis of his best business judgment, although there are many safeguards to ensure that all exhibitors are treated fairly. If successful, the undertakings may achieve the benefits of competition without requiring lengthy and expensive proceedings before the Commission and imposing on the distributors an order enforceable by criminal sanctions.

Such settlements would, of course, not be appropriate in many cases, and the success of the approach in this case is yet to be determined. Nevertheless, it appears to provide an opportunity for greater consultation and cooperation between the Director and members of the business community that may assist in the constructive and efficient resolution of problems.

(4) *Private Actions*

Section 31.1 of the Combines Investigation Act provides for a civil action for damages suffered as a result of a violation of any provision in Part V of the Act or for failure to comply with an order of the Restrictive Trade Practices Commission or a court under the Act. One action under this section is currently before the courts and two actions for damages, not based on this provision, are pending.

(a) *Rocois Construction Inc. v. Québec Ready Mix Inc.*

A private action in this matter was brought before the Federal Court of Canada — Trial Division, under section 31.1 of the Act. A preliminary ruling by Marceau J.[26] that the Court

lacked jurisdiction to hear the action was based on the conclusion of the trial judge that "paragraph 31.1(1)(a) and subsection 31.1(3) of the Combines Investigation Act are not valid because they are *ultra vires* the powers of Parliament."

The Reasons for Judgment are described at page 11 of the 1980 Annual Report.

Having concluded that the Federal Court could not have jurisdiction of the matter, Marceau J. went on to observe that a private action under which the plaintiff could obtain relief for injuries caused by violations of the Combines Investigation Act "already existed in Québec Law by virtue of the general principle of liability recognised in article 1053 of the Civil Code."

He further observed that a similar private right of action also probably existed at common law.

The decision in *Rocois* is under appeal.

(b) *Slaughter Hog Producers*

In 1980, the Alberta Pork Producers Marketing Board and seven slaughter hog producers in the Province of Alberta, on behalf of all slaughter hog producers of the province, launched a class action suit against the major meat packers operating in Alberta and three individuals employed by the packers. The packers and individuals involved were:

Swift Canadian Co. Ltd.
Canada Packers Inc.
Burns Foods Limited
Burns Meats Ltd.
Fletcher's Fine Foods Ltd.
Fletcher's Limited
Fletcher's (Alberta) Limited
Intercontinental Packers Limited
Gainers Foods Ltd.
Donald A. Cummings
Bruce M. Robertson
Robert C. Telford

In the statement of facts, the plaintiffs alleged, in part, that the defendants conspired with each other and others, to lessen competition unduly in the purchase of slaughter hogs.

It was alleged that prices paid producers had been depressed as a result of the conspiracy, and damages totalling $73 million for the years 1970 to 1979 inclusive were claimed.

The defendants made an application to the Alberta Court of Queen's Bench to strike out the class action on the ground that the Board could not act for the producers. The application was rejected and this decision was appealed to the Alberta Court of Appeal, which had heard argument but had not yet rendered its decision at the end of the fiscal year.

In 1983, Swift Canadian Co. Ltd., Donald A. Cummings, Gainers Foods Ltd., Robert C. Telford, Burns Foods Limited and Burns Meats Ltd. made an offer to settle the suit, without admission of liability, which was accepted on behalf of the producers. The accepted offer was the payment of a sum of $700,000 plus $105,000 in costs. The offer, together with a proposal as to how producers should be informed, was filed in the Alberta Court of Queen's Bench, in Edmonton, on November 8, 1983, for approval. Producers were informed of the proposed settlement through advertisements in daily and weekly newspapers and were given until December 8, 1983, to file any objection. On December 9, 1983, the Court declared the offer accepted. The money received, plus any other amounts which may be recovered against the remaining defendants, is to be divided among the producers on the basis of the number of hogs sold during the period from 1970 to and including 1979. The money will be retained pending the finalization of the action against the remaining defendants in order to avoid the excessive costs arising from multiple distribution of the fund.

Proceedings under section 32 of the Combines Investigation Act are outlined in Chapter IV.

(c) *Treatment for Falling Hair*

On May 29, 1980, Vincent Giguère of Québec, Québec, doing business as Les Salons Jeanne Gauthier Enr., Coiffure Style and Vincent Giguère Trichologiste, Québec, Québec, was found guilty under paragraph 36(1)(a) of the Act of making false and misleading claims for treatment to prevent falling hair and to restore hair growth. A number of persons who had been influenced by the misleading publicity had paid considerable sums for the advertised treatment.

Subsequently, on application by Gaetan Jobin of Notre-Dame-des-Laurentides, Québec, assistance in the amount of $1,000 was granted by the administrators of the Québec Fonds d'aide aux recours collectifs, to support a class action for recovery of money so paid.

On July 31, 1981, the Hon. René Hamel of the Québec Superior Court granted permission to Mr. Jobin for the launching of a class action on behalf of persons who had contracted for the services offered by Vincent Giguère pursuant to the publicity in question.

At the end of the fiscal year the proceedings had not been completed.

NOTES

1. *Southam Inc. v. Director of Investigation and Research of the Combines Investigation Branch et al.* (1983), 42 A.R. 93; [1983] 3 W.W.R. 385; 32 C.R. (3d) 141 (Alta. C.A.).

2. *Helix Investments Ltd. and Helix Shipping Limited v. Lawson A.W. Hunter, Director of Investigation and Research, et al.* (1983), 73 C.P.R. (2d) 55 (Fed. T.D.).

3. *Thomson Newspapers Limited et al. v. Lawson A.W. Hunter, Director of Investigation and Research, Combines Investigation Act, et al.* (1983), 73 C.P.R. (2d) 67 (Fed. T.D.).

4. *A.C.L. Canada Inc. et al. v. Lawson A.W. Hunter, Director of Investigation and Research, et al.*, Federal Court of Canada — Trial Division, December 8, 1983 (Jerome A.C.J.).

5. *R. v. Burns Foods Limited et al.* (1983), 76 C.P.R. (2d) 223 (Alta Prov. Ct.).

6. *Blackwoods Beverages Ltd. et al. v. The Queen, Hunter et al.*, Manitoba Court of Queen's Bench, Suit No. 3521/83, Order of Mr. Justice Wilson dated December 20, 1983.

7. *R. v. Metropolitan Toronto Pharmacists' Association*, Supreme Court of Ontario, May 4, 1983, ruling re: *Charter* (Madame Justice Van Camp).

8. *John A. Ziegler et al. v. Lawson A.W. Hunter, Director of Investigation and Research, and O.G. Stoner, Chairman of the Restrictive Trade Practices Commission* (1983), 75 C.P.R. (2d) 222 (Fed. T.D.).

9. *John A. Ziegler et al. v. Lawson A.W. Hunter, Director of Investigation and Research, and O.G. Stoner, Chairman of the Restrictive Trade Practices Commission* (1983), 51 N.R. 1 (Fed. C.A.).

10. *R.L. Crain, Inc., Moore Corporation Limited, and Lawson Business Forms (Manitoba) Ltd. et al. v. L.A. Couture, Q.C., the R.T.P.C., and Lawson A.W. Hunter, Director of Investigation and Research* (1983), 6 D.L.R. (4th) 478 (Sask. Q.B.).

11. Motion heard February 20, 1984; judgment dismissing application for leave to appeal released March 8, 1984 (Dickson, Beetz, Chouinard JJ.).

12. *R. v. 356433 Ontario Ltd. and Hamel, Alfred Guy, Sr.*, Ontario Provincial Court — Criminal Division, County of Essex, February 3, 1984 (Judge D.A. Ebbs).

13. *R. v. Westfair Foods Ltd.*, Provincial Court for Saskatchewan (Saskatoon), February 16, 1984 (Judge R.N. Conroy).

14. *R. v. G.W. Crothers (1965) Limited and Kramer Tractor Ltd.*, Supreme Court of Ontario, Judicial District of York, March 29, 1984.

15. (1983), 3 D.L.R. (4th) 16.

16. *R. v. Hoffmann-LaRoche Limited* (1981), 62 C.C.C. (2d) 118 (C.A.).

17. *Citizens Insurance Co. v. Parsons (1881), 7 A.C. 96.*

18. *BBM Bureau of Measurement and the Director of Investigation and Research*, Federal Court of Appeal, March 6, 1984, unreported decision.

19. *Aetna Insurance Company et al. v. The Queen*, [1978] 1 S.C.R. 731.

20. *Atlantic Sugar et al. v. Attorney General of Canada*, [1980] 2 S.C.R. 644.

21. *The King v. Container Materials, Limited and others*, [1942] S.C.R. 147.

22. *Anthes Business Forms Ltd. and 11 other corporations v. The Queen* (1975), 26 C.C.C. (2d) 349 (C.A.).

23. *R. v. Thomson Newspapers Limited et al*, Ontario Supreme Court, December 9, 1983, unreported decision at page 2781.

24. *R. v. Uranium Canada Ltd./Ltée* (1983), 4 D.L.R. (4th) 193 (S.C.C.).

25. (1982), 39 O.R. (2d) 474 (C.A.).

26. *R. v. Simpsons-Sears Ltd. et al.*, Ontario County Court, June 30, 1983, unreported decision.

27. *R. v. Allied Van Lines Limited et al.*, Supreme Court of Ontario, December 14, 1983, unreported decision.

28. *Rocois Construction Inc. v. Québec Ready Mix Inc.*, [1980] 1 F.C. 184.

CHAPTER III

MANUFACTURING BRANCH

1. Activities

The Manufacturing Branch is responsible for the conduct of all inquiries under the Act with respect to the manufacturing sector of Canadian industry, excluding the manufacturing sectors of the pulp and paper and petroleum industries, which are the responsibility of the Resources Branch. The Manufacturing Branch is also concerned with matters relating to the construction industry.

The main function of the Branch is to undertake industrial and economic analysis based on information obtained from a broad variety of sources with respect to alleged restrictions of competition in the manufacturing sector, and to conduct inquiries into those situations where inquiry is warranted. Such analysis is for the purpose of determining whether there is reason to believe that violations of any of the provisions of Part V of the Act (with the exception of those sections relating to misleading advertising and deceptive marketing practices) have occurred or that grounds exist for the making of an order by the Commission under Part IV.1 of the Act.

The Branch is also concerned with inquiries relating to possible abuses of the rights and privileges conferred by patents and trade marks, where such abuses are related to the activities of firms in the industries for which it is responsible. It also maintains a general surveillance of competitive activities and competition policy issues in those industries so as to identify problem areas requiring analysis or investigation. From time to time it participates in interdepartmental committees and provides input with respect to competition policy in relation to proposed mergers under review by the Foreign Investment Review Agency.

2. Proceedings Following Direct Reference to the Attorney General of Canada Pursuant to Subsection 15(1) of the Act

SECTION 32

(1) *Soft Drinks — Manitoba*

This inquiry commenced in July of 1980 as a result of information obtained by the Director. During the inquiry, the records of two bottlers in three cities in Manitoba and two bottler franchising companies located in Toronto, Ontario, and British Columbia were examined pursuant to section 10 of the Act.

On January 20, 1983, the evidence obtained in the inquiry was referred to the Attorney General of Canada. An Information containing one count under paragraph 32(1)(c) and two counts under paragraph 38(1)(a) of the Act was laid at Winnipeg on July 20, 1983, against Blackwoods Beverages and Beverage Services Ltd., alleging that:

(a) Blackwoods Beverages Ltd. and Beverage Services Ltd. conspired to lessen, unduly, competition in the supply of soft drinks in Brandon, Manitoba, between March 1, 1977, and September 30, 1978;

(b) Blackwoods Beverages Ltd. attempted, between October 1, 1979, and October 30, 1979, to influence upwards the price at which Beverage Services Ltd. sold soft drinks in Brandon, Manitoba;

(c) Blackwoods Beverages Ltd. attempted, between October 1, 1980, and November 15, 1980, to influence upwards the price at which Beverage Services Ltd. sold soft drinks in Winnipeg, Manitoba.

On August 10, 1983, a further Information was laid against Blackwoods Beverages Ltd. and Coca-Cola Ltd. under paragraph 32(1)(c), alleging that both accused conspired to lessen, unduly, competition in the supply of soft drinks in Winnipeg, Manitoba, between February 1, 1980, and September 20, 1980.

Prior to the preliminary hearings, which were scheduled to commence on February 13, 1984, and April 2, 1984, a motion was made on behalf of Blackwoods Beverages Ltd., Beverage Services Ltd. and Coca-Cola Ltd. pursuant to the Constitution Act, 1982. Subsequently, an order was made by the Honourable Mr. Justice Wilson of the Manitoba Court of Queen's Bench on December 20, 1983, that:

(a) the Court of Queen's Bench is a court of competent jurisdiction to hear and determine application;

(b) subsections 10(1) and 10(3) of the Combines Investigation Act are of no force and effect in Manitoba;

(c) the seizure of documents pursuant to section 10 infringed upon the accused companies' rights as guaranteed under section 8 of the Canadian Charter of Rights and Freedoms;

(d) the documents seized are inadmissible as evidence at the preliminary inquiry;

(e) the Information be quashed.

On March 6, 1984, a notice of appeal was filed with the Manitoba Court of Appeal.

This appeal has been scheduled for hearing on May 23, 1984.

SECTION 32.2

(2) *Glass and Glazing — Vancouver*

This inquiry commenced in October 1979 following the receipt of information by the Director alleging that a number of Vancouver area glass and glazing contractors were involved in bid-rigging. During the inquiry, the records of seven firms were examined pursuant to section 10 of the Act, and in March and July 1980 hearings were held in Vancouver pursuant to section 17.

On May 15, 1981, the evidence obtained in the inquiry was referred to the Attorney General of Canada. An Information containing four counts under section 32.2 was laid at Vancouver on May 19, 1982, against the following firms:

Coastal Glass & Aluminum Ltd.
Central Glass Products Ltd.
Bogardus, Wilson, Limited
Zimmcor Company — La Compagnie Zimmcor
PPG Industries Canada Ltd. — Industries PPG Canada Ltée

In the course of proceedings for the scheduling of the preliminary hearings, now set for May 7, 1984, in the Provincial Court of British Columbia, PPG Industries Canada Ltd. sought to obtain an election for trial by jury as a right under the Canadian Charter of Rights and Freedoms. Subsection 44(3) of the Combines Investigation Act states that corporations shall be tried without jury. The Court refused the application and held that paragraph 11(f) of the Charter had no application. PPG appealed to the Supreme Court of British Columbia for a declaration that subsection 44(3) of the Combines Investigation Act is inconsistent with paragraph 11(f) of the Charter.

This appeal was dismissed on October 14, 1982. PPG then appealed to the B.C. Court of Appeal where, on February 4, 1983, the majority ruled that the Charter did not apply. On March 21, 1983, the Supreme Court of Canada agreed to hear PPG's appeal. As of March 31, 1984, the Supreme Court had yet to hear this case.

On August 9, 1982, Zimmcor Company filed a statement of claim in the Federal Court — Trial Division against the Director, the Restrictive Trade Practices Commission and Mr. H. Griffin, who was appointed by the Commission to hear oral evidence pursuant to section 17 of the Act. At the end of the fiscal year, hearings for discovery had taken place.

(3) *Heating Equipment — Edmonton*

This inquiry commenced in January 1978 as a result of information obtained by the Director alleging that a number of Edmonton area heating and air conditioning equipment suppliers were involved in bid-rigging. During the inquiry, the records of three firms were examined pursuant to section 10 of the Act, and in April 1979 hearings were held in Edmonton pursuant to section 17.

On January 19, 1981, the evidence obtained in the inquiry was referred to the Attorney General of Canada. An Information containing seven counts under section 32.2 was laid at Edmonton on February 7, 1983, against R.L. Thorpe Sales Ltd., Trane Company of Canada Limited, Dunham Sales Ltd., Dunham-Bush of Canada Limited and Mark Hot Inc.

On June 6, 1983, R.L. Thorpe Sales Ltd., 67353 Alberta Ltd., formerly Dunham Sales Ltd., and Mark Hot Inc. pleaded guilty and were fined $250 on each count. The counts against the other two accused were withdrawn. The Crown appealed the fines to the Alberta Court of Appeal, which increased them to $1,000 on each count on September 15, 1983.

(4) *Geo. W. Crothers (1965) Limited and Kramer Tractor Ltd. — Caterpillar Diesel Generating Units*

This case arose out of an inquiry by the Director into the production, manufacture, importation, distribution, sale, wholesale, rental, transportation and supply of construction equipment, machinery, engines, attachments, parts and related products in Canada. During the course of this inquiry, the companies' records were examined pursuant to section 10 of the Act. In addition, hearings were held in this matter in October 1980 pursuant to section 17, at which time oral evidence was obtained from four witnesses.

The evidence obtained in this inquiry was referred to the Attorney General of Canada in January 1982. On March 22, 1983, an Information containing one count under section 32.2 was laid at Toronto against Geo. W. Crothers (1965) Limited and Kramer Tractor Ltd.

A preliminary hearing in this matter was waived by both accused, and the trial was held in the Supreme Court of Ontario in Toronto from March 26 to 29, 1984. On March 26, 1984, Geo. W. Crothers (1965) Limited pleaded guilty and was convicted and fined $12,500.

Kramer Tractor Ltd., upon being arraigned, entered a motion that its rights under section 7 and paragraph 11(b) of the Canadian Charter of Rights and Freedoms had been violated as a result of the delay between the commencement of the Director's inquiry and the prosecution proceedings. After hearing argument, the Court ruled that the time period envisaged by paragraph 11(b) of the Charter was the period between the laying of an Information and the commencement of trial proceedings. The time taken to investigate a matter was not relevant and the motion was accordingly dismissed. Kramer Tractor Ltd. then pleaded not guilty to the charge but on March 29, 1984, was convicted and fined $20,000. Subsequently, Kramer Tractor appealed the conviction and fine.

SECTION 33

(5) *Cutting Mechanisms*

This inquiry began in March 1976 following the receipt of a complaint from a manufacturer of cutting mechanisms, alleging that his major competitor had engaged in a variety of unfair and anticompetitive activities that had created or maintained an illegal monopoly in various geographic and customer markets within Canada. In March and April 1976, pursuant to section 10 of the Act, the records of the alleged monopolist and several of his regional dis-

tributors were examined. In early 1977, pursuant to section 9, Returns of Information were sent to all manufacturers in the industry seeking certain statistical information. The evidence obtained in the inquiry was referred to the Attorney General of Canada on June 9, 1981.

In April 1982, the Department of Justice indicated that, on the basis of the material submitted, prosecution was not warranted. Following an extensive reexamination of the evidence in light of this opinion, the Director concluded that the perceived deficiencies could not be overcome by additional material. Accordingly, he concurred with the position of the Department of Justice, and closed his file on the matter.

SECTION 34

(6) *Simmons Limited — Simmons Limitée — Upholstered Products and Case Goods*

This inquiry was formally commenced in December 1980 during an examination of the records of Simmons Limited in relation to an inquiry under section 38 of the Act. During the investigation into section 38 matters (see item (34)), the Director was provided with reason to believe that Simmons Limited was acting in a manner contrary to paragraph 34(1)(a) of the Act. Pursuant to section 10 of the Act, the records of the firm were examined during December 1980, March 1981 and September 1982.

On September 22, 1983, the evidence obtained in the matter was referred to the Attorney General of Canada, and on November 17, 1983, an Information containing two counts under paragraph 34(1)(a) was laid at Brampton, Ontario. The preliminary hearing has been scheduled to commence on October 15, 1984, concurrently with charges laid against Simmons Limited under section 38.

SECTION 38

(7) *Ravel Enterprises Limited — Stereo Components*

This inquiry was initiated in October 1974 following the receipt of a complaint from a Toronto stereo retailer that the exclusive Canadian distributor of the Pioneer brand of stereo components, Ravel Enterprises Limited (carrying on business under the name and style of S.H. Parker Company), was engaging in a policy of resale price maintenance.

On February 6, 1976, the evidence in this matter was referred to the Attorney General of Canada. An Information containing one count under subsection 38(2) and one count under subsection 38(3) of the Act was laid at Toronto on May 4, 1976, against Ravel Enterprises Limited. The preliminary hearing took place on December 13, 1976, and the accused company was ordered to stand trial on both counts. On December 22, 1977, Ravel Enterprises Limited was found guilty on both counts, and on January 24, 1978, the court imposed fines of $25,000 and $5,000. The company subsequently appealed to the Ontario Court of Appeal.

Since the appeal in this matter involved many of the same issues raised in both the *Hoffmann-LaRoche* and *Alltrans* appeals (see page 10 of the 1982 Annual Report), the proceedings were postponed pending the decisions in those matters. The appeal was further postponed when the decision of the Alberta Court of Appeal in the *Alltrans* case was appealed to the Supreme Court of Canada.

Subsequent to the ruling by the Supreme Court in the *Alltrans* matter (see Chapter VI, "For-hire" Trucking) Ravel Enterprises abandoned their appeal, and the convictions and sentence stand.

(8) *Cluett, Peabody Canada Inc. — Men's Shirts*

This inquiry commenced in August 1979 following the receipt of a complaint from a retailer in Kingston, Ontario, alleging that he had been refused supply of "Arrow" brand men's shirts by Cluett, Peabody Canada Inc. because he operated a discount retail outlet. During the course of the inquiry, the company's records were examined pursuant to section 10 of the Act. Further information was obtained from interviews with retailers across the country.

On October 10, 1980, the evidence obtained in the inquiry was referred to the Attorney General of Canada. On March 16, 1981, an Information containing three counts under paragraph 38(1)(a) and one count under paragraph 38(1)(b) was laid at Toronto against Cluett, Peabody Canada Inc. The preliminary hearing was held in Toronto on October 6, 1981, and the company was ordered to stand trial on all four counts.

The trial commenced on April 5, 1982. On May 6, 1982, the accused was acquitted on two of the counts under paragraph 38(1)(a). The accused was convicted on the other count under paragraph 38(1)(a) and the count under paragraph 38(1)(b). Oral submissions on sentencing were heard on June 3, 1982, and a fine of $10,000 was imposed on each count.

Cluett, Peabody Canada Inc. filed a notice of appeal in the Supreme Court of Ontario on June 30, 1982, against the convictions and applied for leave to appeal against sentence. On April 29, 1983, the appeal was dismissed.

(9) *Brown Shoe Company of Canada Limited — Footwear*

This inquiry was formally commenced in October 1978 following the receipt of information from eight current or former retailers which indicated that Brown Shoe Company had engaged in resale price maintenance activity. The evidence in the inquiry was referred to the Attorney General of Canada on March 27, 1981. An Information containing 13 counts under section 38 of the Act was laid at Perth, Ontario, on November 26, 1981, against Brown Shoe Company of Canada Limited.

During the preliminary hearing, which was held from May 3 to May 5, 1982, the Crown withdrew one count. On July 9, 1982, the accused was discharged on the remaining 12 counts.

Application by the Attorney General of Canada for the written consent of a judge in the preferring of an indictment, under section 507 of the Criminal Code, was made but was dismissed on February 2, 1983, by the County Court for the judicial district of Lanark.

On June 15, 1983, the Crown sought the consent of a Supreme Court of Ontario judge for the preferring of an indictment. Following a preliminary motion by the respondent, the Court concluded that a second application for a preferred indictment would constitute an abuse of process, and stayed the proceeding.

(10) *Parkland Furniture Mfg. — Furniture (Alberta)*

This inquiry was formally commenced in August 1980 following the receipt of a complaint from a retailer in Alberta who had been refused supply by Parkland Furniture Mfg., a business operated by Canadian Union College of Lacombe, Alberta. Evidence obtained in this inquiry was referred to the Attorney General of Canada on September 4, 1981. An Information containing one count under paragraph 38(1)(a) and one under paragraph 38(1)(b) of the Act was laid at Lacombe on November 27, 1981, against Canadian Union College, carrying on business as Parkland Furniture Mfg., and H. Jacobson, General Manager of the College.

At the preliminary hearing on November 2, 1982, the Crown withdrew the count under paragraph 38(1)(a) and the accused were ordered to stand trial on the count under paragraph 38(1)(b). The trial commenced on May 11, 1983, in Red Deer, Alberta, and on May 12, 1983, the accused were acquitted.

For the purpose of this prosecution, the Attorney General of Canada had been appointed as agent for the Attorney General of Alberta. This action was necessitated by the Alberta Supreme Court's decision in the *Alltrans* case, which was reversed by the Supreme Court of Canada in October 1983 (see Chapter II).

(11) *Meubles Daveluyville Ltée — Furniture (Hull)*

This inquiry commenced in August 1980 following the receipt of a complaint from a retailer in Hull, Québec, that Meubles Daveluyville Ltée had decided to close his account because of his low pricing policy. In August 1980, the records of the company were examined.

On May 25, 1981, the evidence obtained in the inquiry was referred to the Attorney General of Canada. An Information containing one count under each of paragraphs 38(1)(a) and 38(1)(b) of the Act was laid at Hull on December 4, 1981, against Meubles Daveluyville Ltée. At the preliminary hearing, which took place on May 21, 1982, the accused was ordered to stand trial only on the count under paragraph 38(1)(b). The trial was scheduled to commence on April 5, 1983, but was postponed and is now scheduled for April 11, 1984.

(12) *Sealy Eastern Limited — Mattresses and Box Springs*

This inquiry was begun in December 1977 following the receipt of several complaints from consumers regarding their inability to negotiate for a discount on the suggested retail price of the various models of mattresses and box springs that comprise the "Posturepedic" brand of bedding, which is manufactured in eastern Canada by Sealy Eastern Limited under an exclusive licence granted by Sealy Canada Ltd./Ltée of Toronto.

During the course of this inquiry, the corporate records of Sealy Canada Ltd./Ltée, its exclusive eastern Canada licensee, Sealy Eastern Limited, and its exclusive western Canada licensee, Sealy (Western) Ltd., were examined pursuant to section 10 of the Act. Further evidence was obtained by way of interviews of numerous furniture and bedding retailers across Canada.

On July 20, 1981, the evidence in the inquiry was referred to the Attorney General of Canada. On February 24, 1982, an Information containing three counts under the former subsection 38(2) and one count under the former subsection 38(3) of the Act was laid at Toronto against Sealy Eastern Limited and Sealy Canada Ltd./Ltée.

On January 13, 1983, a stay of proceedings was entered and on January 13, 1984, the stay of proceedings was allowed to expire (see also item (18)).

(13) *BSR (Canada) Ltée/Ltd. — Stereo Components*

This inquiry commenced in September 1979 following the receipt of a complaint from a Toronto retailer alleging that BSR (Canada) Ltée/Ltd. had refused to continue to supply him with Bang & Olufsen stereo components because of his low pricing policy.

During the course of the inquiry documentary evidence was obtained from the premises of BSR pursuant to section 10 of the Act. In May 1980 and January 1981 hearings for the taking of oral evidence were conducted in Toronto, during which a total of seven witnesses testified under oath.

On July 24, 1981, the evidence in this inquiry was referred to the Attorney General of Canada. On March 9, 1982, an Information was laid at Toronto against BSR (Canada) Ltée/Ltd. containing one count under paragraph 38(1)(b).

The preliminary hearing took place on September 7, 1982, at which time the accused was ordered to stand trial. Trial date was set for February 21, 1983, but defence counsel subsequently requested a postponement. The trial commenced on July 26, 1983, at which time the accused changed its plea to guilty and undertook to resupply the complainant. The company was fined $7,500.

(14) *Sklar Furniture Limited — "Peppler" Furniture (Case #2)*

This inquiry was begun in September 1980 following the receipt of a complaint from a Vancouver furniture retailer that his local Sklar-Peppler sales representative was refusing to fill any more orders for the Peppler line of furniture, which is manufactured by Sklar Furniture Limited in Whitby, Ontario, because that sales representative was displeased with the low retail pricing that the complainant had previously charged on items from the Peppler line.

Evidence was obtained during a search of the premises of Sklar Furniture Limited during November 1980. Further information was gathered during interviews of other furniture retailers across Canada. On October 9, 1981, the evidence in this inquiry was referred to the Attorney General of Canada.

On April 2, 1982, an Information containing one count under paragraph 38(1)(a) and one count under paragraph 38(1)(b) was laid at Ottawa against Sklar Furniture Limited.

Following a preliminary hearing held in Ajax, Ontario, on November 3, 1982, Sklar Furniture Limited was discharged on the count under paragraph 38(1)(a) but was ordered to stand trial on the count under paragraph 38(1)(b).

The trial commenced in Whitby, Ontario, on November 7, 1983, and on November 9, 1983, the accused was convicted on the count under paragraph 38(1)(b) and was fined $3,000.

(15) *Euroclean Canada Inc. — Husqvarna Sewing Machines*

This inquiry commenced in November 1979 following the receipt of a complaint alleging a policy of resale price maintenance by Dometic Canada Inc. (now Euroclean Canada Inc.). During the course of the inquiry, the records of the company were examined pursuant to section 10 of the Act.

On October 27, 1981, the evidence in this inquiry was referred to the Attorney General of Canada. On April 20, 1982, an Information containing four counts under subsection 38(1) was laid at Kitchener, Ontario, against Euroclean Canada Inc. The preliminary hearing took place on October 12, 1982, and the accused company was ordered to stand trial on three counts.

The trial was set for October 1983 but has been postponed pending the determination by the Supreme Court of Canada in *R. v. Marine Industries Ltd.* of a corporation's liability for criminal acts of its employees and directors.

(16) *R.C.A. Inc. — Televisions and Video Cassette Recorders*

This inquiry commenced in October 1978 following the receipt of a complaint from an Edmonton retailer alleging that R.C.A. had refused to renew his authorized dealership contract and hence had refused further supply of RCA televisions and video cassette recorders because of his low pricing policy. During the course of the inquiry, the records of the company were examined pursuant to section 10 of the Act, and interviews with other dealers were conducted.

On September 17, 1981, the evidence in the inquiry was referred to the Attorney General of Canada. On June 21, 1982, an Information containing four counts under paragraph 38(1)(a) and two counts under paragraph 38(1)(b) was laid at Edmonton against R.C.A. Inc.

The preliminary hearing commenced on December 6, 1982, at which time two of the counts under paragraph 38(1)(a) and one of the counts under paragraph 38(1)(b) were withdrawn. On December 7, 1982, R.C.A. Inc. was ordered to stand trial on the remaining three counts.

On September 22, 1983, R.C.A. Inc. pleaded guilty to one count under paragraph 38(1)(a) and was fined $5,000. The two remaining counts were withdrawn.

(17) *Bigelow Canada Limited — Carpets*

This inquiry commenced in March 1981 following the receipt of a complaint from a retailer alleging that the representative of Bigelow Canada Limited had discriminated against him because of his low pricing policy. In April 1981, the records of the company were examined pursuant to section 10 of the Act, and in October 1981 hearings for the taking of oral evidence were held in Québec City.

The evidence obtained in the inquiry was referred to the Attorney General of Canada on March 30, 1982. An Information containing one count under paragraph 38(1)(b) was laid at Québec on August 12, 1982, against Bigelow Canada Limited.

The preliminary hearing in this matter commenced on March 31, 1983, and the accused was ordered to stand trial. The trial has been scheduled for April 2, 1984.

(18) *Sealy (Western) Ltd; Seebee Investments (1966) Ltd. — Mattresses and Box Springs*

This inquiry commenced in December 1977 following the receipt of several complaints from consumers regarding their inability to negotiate for a discount from the suggested retail price of the various models of mattresses and box springs that comprise the "Posturepedic" brand of bedding. During the time period in question, these products were manufactured exclusively in western Canada under an exclusive licence granted by Sealy Canada Ltd./Ltée of Toronto, by either Sealy (Western) Ltd. or its predecessor company, Seebee Investments (1966) Ltd., both of Edmonton. During the course of the inquiry, the companies' records were examined pursuant to section 10 of the Act.

On July 20, 1981, the evidence in this matter was referred to the Attorney General of Canada. At Edmonton on November 9, 1982, an Information containing one count under the former subsection 38(2) and one count under paragraph 38(1)(a) of the Act was laid against Sealy (Western) Ltd; and an Information containing one count under the former subsection 38(3) of the Act was laid against Seebee Investments (1966) Ltd. Each charge names Sealy Canada Ltd./Ltée of Toronto as party or privy to the offence.

The preliminary hearing, which was set for May 25, 1983, was postponed until July 19, 1983, at which time a stay of proceedings was entered with respect to both companies (see also item (12)).

(19) *Mission Electronics North American Corporation — Stereo Equipment*

This inquiry commenced in July 1981 following the receipt of a complaint from a Toronto stereo retailer alleging that Mission Electronics had attempted to influence upward the price at which he was selling Mission speakers and that Mission Electronics thereafter refused him supply because of his practice of discounting the price of the product. During the course of the inquiry, the records of the company were examined pursuant to section 10 of the Act. In May 1982, a second complaint was received from another Toronto stereo retailer alleging that Mission Electronics refused to supply him because of his low pricing policy.

On June 28, 1982, the evidence in this inquiry was referred to the Attorney General of Canada. On December 9, 1982, an Information containing three counts under subsection 38(1) was laid at Toronto against Mission Electronics North American Corporation.

At the preliminary hearing held in Toronto on June 13, 1983, the accused was ordered to stand trial on all three counts. The trial is scheduled to commence on April 16, 1984.

(20) *Waterbeds*

This inquiry commenced in December 1981 following the receipt of a complaint from a Winnipeg retailer of building supplies and lumber who had expanded his operation to include waterbeds and related components. The complainant alleged that Andico Manufacturing Limited, trading under the firm name and style of Halcyon Waterbed Company had attempted to influence upward the price at which he was selling Halcyon products and thereafter refused him supply because of his low pricing policy.

The complainant further alleged that International Waterbed Distributors Ltd. had refused to continue to suppy him with "Classic" waterbed components because of his low pricing policy.

During the course of the inquiry, the records of Andico Manufacturing Limited and International Waterbed Distributors Ltd. were examined pursuant to section 10 of the Act.

On October 22, 1982, the evidence in this inquiry was referred to the Attorney General of Canada. On January 18, 1983, an Information containing one count under each of paragraphs 38(1)(a) and 38(1)(b) was laid at Winnipeg against Andico Manufacturing Limited. As well, an Information containing one count under paragraph 38(1)(b) was laid against International Waterbed Distributors Ltd.

On November 17, 1983, Andico was found guilty in the Manitoba Court of Queen's Bench on both the count under paragraph 38(1)(a) and the count under paragraph 38(1)(b). On November 22, 1983, the company was fined $1,000 and $10,000, respectively.

In the same Court, on November 24, 1983, International was found guilty on one count under paragraph 38(1)(b) of the Act. The firm was fined $7,000 on December 2, 1983.

(21) *The Camrost Group Limited — Condominiums*

This inquiry commenced in March 1982 following the receipt of a complaint alleging that The Camrost Group Limited was engaged in resale price maintenance with respect to condominiums being offered for resale in One Parklane, a Toronto condominium development. The corporate records of the developer were examined in March 1982 pursuant to section 10 of the Act.

On November 25, 1982, the evidence in this inquiry was referred to the Attorney General of Canada. An Information containing seven counts under paragraph 38(1)(a) was laid at Toronto on January 19, 1983, against The Camrost Group Limited. The preliminary hearing was held on February 6, 1984, at which time the Crown withdrew one count. The accused was ordered to stand trial on three of the six remaining counts. The trial is scheduled to commence on October 29, 1984.

(22) *MEM Company (Canada) Limited — Perfumes, Cosmetics, Toiletries*

This inquiry commenced in May 1981 following the receipt of a complaint alleging resale price maintenance on the part of MEM Company (Canada) Limited. The records of MEM Company (Canada) Limited were examined in September 1981 and in June 1982 pursuant to section 10 of the Act.

The evidence in the inquiry was referred to the Attorney General of Canada on October 4, 1982. An Information containing one count under paragraph 38(1)(a) and one count under paragraph 38(1)(b) was laid at London, Ontario, on January 21, 1983, against MEM Company (Canada) Limited.

On August 25, 1983, following the preliminary hearing, the accused was ordered to stand trial. The trial was held in London on January 16 and 17, 1984, and at the conclusion of the proceedings the accused was acquitted.

(23) *H.A. Imports of Canada Ltd. — Sportswear*

This inquiry was initiated in June 1982 following the receipt of a complaint from a Toronto retailer alleging that Omar Imports of Canada, a division of H.A. Imports of Canada Ltd., had refused to supply the retailer with "Lacoste" brand sportswear because of the retailer's low pricing policy. On August 4, 1982, the records of the manufacturer were examined pursuant to section 10 of the Act.

On September 8, 1982, the evidence in this inquiry was referred to the Attorney General of Canada. An Information containing two counts under paragraph 38(1)(a) and one count under paragraph 38(1)(b) was laid at Toronto on February 10, 1983. The preliminary hearing was held in Toronto on January 3, 1984, and the company was ordered to stand trial on all three counts. The trial is scheduled to commence on June 11, 1984.

(24) *Salomon Sports Canada Ltd./Ltée — Skis and Ski Equipment*

This inquiry commenced on August 5, 1981, following the receipt of complaints alleging that Salomon Sports Canada Ltd./Ltée had refused to supply certain retailers because of the retailers' low pricing policies and that Salomon had also attempted to influence upward the price at which certain retailers sold Salomon's products. During the course of the inquiry, the corporate records were examined pursuant to section 10 of the Act. In April 1982 hearings under section 17 were conducted in Vancouver, during which five witnesses testified under oath.

On August 9, 1982, the evidence in this inquiry was referred to the Attorney General of Canada. On February 16, 1983, an Information was laid at Montréal against Salomon Sports Canada Ltd./Ltée, containing five counts under paragraph 38(1)(a) and four counts under paragraph 38(1)(b).

Following the preliminary hearing in May 1983 the accused was ordered to stand trial on eight counts. The trial commenced on October 24, 1983, and was concluded on November 25, 1983. On March 19, 1984, the accused were convicted on seven counts. The decision on sentence is scheduled for May 16, 1984.

(25) *Durable Equipment Limited — Food-Service Equipment*

This inquiry commenced in June 1981 following the receipt of a complaint from a kitchen equipment dealer in Moncton alleging that he had been refused supply of food-service equipment products by Durable Equipment Limited of Toronto because of his low pricing policy. The complainant also alleged that a competing dealer, Cody-Food Equipment Ltd. of Saint John, New Brunswick, had induced Durable Equipment Limited into refusing to supply the products to the complainant. During the course of the inquiry, the records of the two companies were examined pursuant to section 10 of the Act.

On November 2, 1982, the evidence obtained in this inquiry was referred to the Attorney General of Canada. On March 2, 1983, an Information was laid at Toronto containing one count under paragraph 38(1)(b) against both Durable Equipment Limited and Cody-Food Equipment Ltd., and one count under subsection 38(6) against Cody-Food Equipment Ltd.

At the preliminary hearing held in Toronto on December 19, 1983, Durable Equipment Limited was ordered to stand trial on the count under paragraph 38(1)(b) and Cody-Food Equipment Ltd. was ordered to stand trial on both counts. On February 24, 1984, a stay of proceedings was entered in respect of the count against Durable Equipment Limited. A trial date of June 4, 1984, has been set for the counts against Cody-Food Equipment Ltd.

(26) *Esteban Designs Inc. — Jeans*

This inquiry was initiated in November 1982 following a complaint from a retailer in Prescott, Ontario, alleging that Esteban Designs Inc. and a Mr. L. Clements, an independent sales agent for that company, were attempting to influence upward the retailer's selling price on Esteban jeans. On November 17, 1982, the premises of Esteban Designs Inc., and those of Mr. L. Clements, carrying on business as Larry Clements Enterprises Ltd., were searched pursuant to section 10 of the Act.

On November 30, 1982, the evidence obtained during the course of the inquiry was referred to the Attorney General of Canada. On March 25, 1983, an Information containing one count under paragraph 38(1)(a) was laid at Ottawa against Esteban Designs Inc. and Mr. Clements.

A defence motion to quash the Information on jurisdictional grounds was filed on June 2, 1983. A revised Information was laid on September 7, 1983. However, following the death in December 1983 of the principal shareholder and president of Esteban Designs Inc., it was decided that no useful purpose would be served by continuing the prosecution. Accordingly, a stay of proceedings was entered on February 15, 1984.

(27) *Savroche Enterprises Inc. — Jordache Jeans*

This inquiry commenced in December 1980 following the receipt of information indicating that Savroche Enterprises Inc., the Canadian distributor for Jordache Jeans, had attempted to discourage the reduction of a retailer's prices and had subsequently refused further supplies to the retailer because of the latter's low pricing policy. In January 1981, the corporate records were examined pursuant to section 10 of the Act.

On March 29, 1982, the evidence in this inquiry was referred to the Attorney General of Canada. On March 29, 1983, an Information containing three counts under paragraph

38(1)(a) and eight counts under paragraph 38(1)(b) was laid at Montréal against Savroche Enterprises Inc. An Information containing one count under paragraph 38(1)(b) was also laid against Mr. David Tenenbaum (a.k.a. Tanner), Secretary-Treasurer, Savroche Enterprises Inc.

The preliminary hearing was held in Montréal from September 21 to 23, 1983. Due to the unavailability of a witness, the Crown withdrew one count against the company under paragraph 38(1)(b), and at the conclusion of the hearing the company pleaded guilty to the remaining counts and the individual pleaded guilty to the one count. The corporate accused was fined a total of $25,000 and the individual was granted an absolute discharge. The Crown appealed the fine and the absolute discharge, and on February 1, 1984, the Québec Court of Appeal increased the fine against the corporate accused to $50,000 and convicted the individual and imposed a fine of $5,000.

(28) *Stereo Components*

This inquiry commenced in January 1979 following the receipt of complaints alleging that E.S. Gould Marketing Co. Ltd., Harmon-Kardon of Canada Ltd. and James B. Lansing Sound Canada Limited were engaged in resale price maintenance. During the course of the inquiry, company records were examined pursuant to section 10 of the Act and a number of stereo retailers were interviewed.

On April 14, 1982, the evidence in this inquiry was referred to the Attorney General of Canada. On March 31, 1983, an Information containing two counts under paragraph 38(1)(a) and two counts under paragraph 38(1)(b) was laid at Toronto. Harmon-Kardon of Canada Ltd. and James B. Lansing Sound Canada Limited were each named in two charges together with E.S. Gould Marketing Co. Ltd.

The preliminary hearing has been set for April 11 to 13, 1984.

(29) *W.S. (Bud) Hardy Agency Ltd. — Men's Clothing*

This inquiry was initiated in October 1982 following the receipt of a complaint from a retailer in Prince Albert, Saskatchewan, alleging that he had been refused supply of several lines of men's wear by W.S. (Bud) Hardy Agency Ltd. due to his low pricing policy. During the course of this inquiry the company's records were examined pursuant to section 10 of the Act.

In March 1983, the evidence obtained in this matter was referred to the Attorney General of Canada. On May 27, 1983, an Information containing two counts under paragraph 38(1)(b) was laid at Saskatoon against W.S. (Bud) Hardy Agency Ltd. On September 13, 1983, the company pleaded guilty and was fined $500 on each count.

(30) *Daymor Dress (Canada) Inc. — Women's Wear*

This inquiry commenced in April 1983 following the receipt of a complaint from a retailer alleging that Daymor Dress (Canada) Inc. was refusing to supply him with womens wear due to his low pricing policy.

In April 1983, the records of the manufacturer were examined pursuant to section 10 of the Act. On April 25, 1983, the evidence in the inquiry was referred to the Attorney General of Canada. On June 13, 1983, an Information containing one count under each of paragraphs 38(1)(a) and 38(1)(b) was laid at Montréal against Daymor Dress (Canada) Inc. The company waived the preliminary hearing and the trial took place on October 28, 1983. The company was convicted and fined $3,000 on each count.

(31) *Sony of Canada Ltd. — Stereophonic Equipment*

This inquiry commenced in April 1982 following the receipt of a complaint from a Toronto retailer alleging that Sony of Canada Ltd. had refused to supply him with stereophonic products due to his low pricing policy. During the course of this inquiry, the company's records were examined pursuant to section 10 of the Act.

On March 25, 1983, the evidence in this inquiry was referred to the Attorney General of Canada. On July 19, 1983, an Information containing six counts under paragraphs 38(1)(a) and 38(1)(b) was laid at Ottawa against Sony of Canada Ltd. The preliminary hearing in this matter, which was scheduled for March 1984, has at the request of defence counsel been rescheduled to September 24 to 28, 1984.

(32) *Rainbow Jeans*

This inquiry commenced in February 1981 following the receipt of a complaint from a retailer of casual clothing alleging that the Rainbow Jean Company Limited of Montréal, Québec, had attempted to influence upward the price at which he sold Rainbow-brand jeans.

Searches were conducted in February 1981, in Montréal and Charlottetown, Prince Edward Island, pursuant to section 10 of the Act. The matter was referred to the Attorney General of Canada in March 1982. An Information containing one count under paragraph 38(1)(a) was laid at Charlottetown on August 16, 1983, against Rainbow Jean Company Limited.

On September 19, 1983, defence counsel moved that the Information be quashed on grounds of duplicity, arguing that it was not specified which method (i.e., threat, promise or like means) had been used by the accused in committing the alleged offence. On October 17, 1983, the motion was dismissed. The accused then pleaded not guilty and elected trial by judge and jury. After argument on this point, defence counsel agreed that this option was not available to the accused and withdrew the election. The preliminary hearing was scheduled for January 18, 1984.

At the hearing, defence counsel made a motion to quash the Information under section 24 of the Charter of Rights and Freedoms, alleging a violation of the accused's right under paragraph 11(a) thereof to be informed without unreasonable delay of the specific offence with which it was charged. Defence counsel contended that the time span before the laying of charges should be considered relevant in determining whether or not there had been an unreasonable delay. However, on February 15, 1984, the Court determined that the relevant period began only with the laying of charges and ruled that no unreasonable delay had in fact occurred in this instance.

The preliminary inquiry is scheduled to continue on April 10, 1984.

(33) *Ziggy Jeans*

This inquiry commenced in February 1981 following the receipt of a complaint from a retailer of casual clothing alleging that Lewis-Choi Enterprises Ltd., the sales agent for Western Glove Works Limited of Winnipeg, Manitoba, had refused to supply Ziggy-brand jeans to the retailer because of his low pricing policy.

Searches were conducted in February 1981, in Winnipeg, Charlottetown and Montréal, pursuant to section 10 of the Act. The matter was referred to the Attorney General of Canada in March 1982. An Information containing one count under paragraph 38(1)(b) was laid at Charlottetown against Western Glove Works Limited and Lewis-Choi Enterprises Ltd. jointly on August 16, 1983.

Subsequently, it was discovered that the time span in the Information included a period preceding incorporation of the company and it would, therefore, be necessary to charge one of the principal owners of Lewis-Choi Enterprises. This has not yet been done, due to discussions between defence and prosecution counsel on the disposition of the matter. The discussions were still in progress at the end of the fiscal year.

(34) *Simmons Limited — Simmons Limitée — Bedding*

This inquiry was formally commenced in November 1980 following the accumulation of complaints from both consumers and retailers in Moncton, Montréal, Ottawa and Vancouver, which gave the Director reason to believe that Simmons Limited was acting in a manner con-

trary to paragraphs 38(1)(a) and 38(1)(b) of the Act. Pursuant to section 10, the records of Simmons Limited were examined in December 1980, March 1981 and September 1982.

The evidence in this matter was referred to the Attorney General of Canada on March 7, 1983. An Information containing 16 counts under paragraph 38(1)(a) and seven counts under paragraph 38(1)(b) was laid at Brampton, Ontario, on September 30, 1983. The preliminary hearing is scheduled to commence on October 15, 1984, concurrently with charges laid against Simmons Limited under paragraph 34(1)(a) (see item (6).)

(35) *Floor Coverings — Western Canada*

This inquiry commenced in August 1980 following the receipt of a complaint from a carpet retailer that he was having difficulty entering an advantageous retail marketing program run by Armstrong World Industries Canada Ltd. — Les Industries Mondiales Armstrong Canada Ltée. and known as the Floor Fashion Centre Program (FFC). In his complaint the retailer alleged that his problems of entry were due to his low pricing policy.

During the course of the inquiry, the corporate records of Armstrong were examined pursuant to section 10 of the Act. In late November and early December 1982, examinations under section 17 of the Act were conducted in Edmonton. The evidence indicated that Armstrong had refused to supply products unique to FFC accounts and otherwise discriminated against the complainant because of his low pricing policy. The evidence also indicated that Beach Bros. Floor Coverings Ltd., an Edmonton retailer, had attempted to persuade Armstrong not to supply the complainant because of the latter's low pricng policy.

On March 10, 1983, the evidence in this inquiry was referred to the Attorney General of Canada. On October 3, 1983, an Information containing one count under paragraph 38(1)(b) was laid at Edmonton against Armstrong and an additional Information containing one count under subsection 38(6) was laid against Beach Bros.

The preliminary hearings for Armstrong and Beach Bros. have been set for April 16, 1984, and May 8, 1984, respectively.

(36) *Skis — Vancouver*

This inquiry commenced in February 1983 following the receipt of information that S.P.D. Agencies Ltd. (now Dave Downie Sales Agency Inc.), the British Columbia distributor of Elan Skis, had attempted to influence upward the price at which a retailer had offered to sell a product, and then subsequently refused to continue supplying the retailer because of the latter's low pricing policy. On February 4, 1983, the corporate records were examined pursuant to section 10 of the Act.

On August 30, 1983, the evidence in this inquiry was referred to the Attorney General of Canada. On October 11, 1983, an Information containing two counts under paragraphs 38(1)(a) and 38(1)(b) was laid at Vancouver against Dave Downie Sales Agency Inc., Morley Pitcher and David Downie. The preliminary hearing has been set for April 18, 1984.

(37) *Great West Imports Ltd. — Musical Instruments*

This inquiry commenced in September 1982 following the receipt of a complaint from a Winnipeg retailer alleging that Great West Imports Ltd. had refused to supply him with musical instruments due to his low pricing policy. During the course of the inquiry, the company's records were examined pursuant to section 10 of the Act.

On June 8, 1983, the evidence in this inquiry was referred to the Attorney General of Canada. On November 23, 1983, an Information containing two counts under paragraph 38(1)(b) of the Act was laid at Winnipeg against Great West Imports Ltd. The preliminary hearing has been set for May 14 to 16, 1984, in Winnipeg.

(38) *Woodstoves — British Columbia*

This inquiry commenced in February 1982 following the receipt of a complaint from a retailer in British Columbia that Northwest Stoves Ltd. had refused to supply or otherwise discriminated against him in regard to woodstoves, and had also attempted to influence upward the price at which he sold woodstoves. During the course of the inquiry, the corporate records were examined pursuant to section 10 of the Act.

On March 17, 1983, the evidence in the inquiry was referred to the Attorney General of Canada. On February 13, 1984, an Information was laid at North Vancouver containing one count under paragraph 38(1)(a) and one count under paragraph 38(1)(b) against both Northwest and Wayne Rourke, the company's president.

The date for the trial in this matter will be set on May 10, 1983.

(39) *Women's Apparel*

In April and May 1982, the Director received two separate complaints from Toronto-area retailers alleging that three affiliated suppliers of women's apparel had refused to supply them with products because of their low pricing policies. The complainants further alleged that competing retailers had pressured the suppliers into effecting the refusal to supply.

Information in this matter was obtained under the authority of section 10 of the Act, and the evidence was referred to the Attorney General of Canada on April 18, 1983. Following a review of the evidence, however, the Attorney General concluded that a prosecution was not warranted.

(40) *Plastic Utensils*

This inquiry commenced in December 1981 following the receipt of a complaint from a Québec wholesaler alleging that a manufacturer of plastic utensils had reduced the discount he was receiving because of his low pricing policy.

During the inquiry, the records of the manufacturer were examined pursuant to section 10 of the Act and hearings took place in May 1982. The evidence was referred to the Attorney General of Canada on March 29, 1983. Following a review of the evidence, the Attorney General concluded that a prosecution was not warranted.

(41) *Chainsaws*

This inquiry commenced in August 1980 following the receipt of a complaint from a retailer alleging that a representative of a chainsaw distributor attempted to influence upward the price at which he sold chainsaws and subsequently refused to supply him because of his low pricing policy.

During the course of the inquiry, the records of the distributor were examined pursuant to section 10 of the Act. The evidence in this inquiry was referred to the Attorney General of Canada in March 1982. In May 1983, following a review of the evidence, the Attorney General concluded that a prosecution was not warranted.

(42) *Skiwear*

This inquiry commenced in February 1981 after the receipt of a complaint from a retailer in Charlottetown, Prince Edward Island, alleging that a manufacturer of skiwear had refused to supply vests to his store unless he agreed not to discount them. The retailer also alleged that the actions of the manufacturer were the result of pressure by a competing retailer.

Pursuant to section 10 of the Act, searches were conducted of the premises of the manufacturer and the competing retailer. The evidence obtained in the inquiry was referred to the Attorney General of Canada in March 1982. In June 1983, it was determined that the nature of the evidence was inconclusive and a prosecution was not warranted.

3. Applications by the Director to the Restrictive Trade Practices Commission under Part IV.1

No applications were made under Part IV.1 during the year.

4. Discontinued Inquiries Reported to the Minister in Accordance with Subsection 14(2) of the Act

SECTION 31.2

(1) *Tubular Steel*

This inquiry commenced in November 1980 on the basis of a complaint from the president of a steel brokerage house in Rexdale, Ontario, alleging that his business had been substantially affected due to the refusal of a manufacturer of steel tubes used in the oil and gas industry to supply the complainant with such products. During the course of the inquiry, the records of the supplier were examined pursuant to section 10 of the Act.

The evidence so acquired was insufficient to support an application by the Director to the Restrictive Trade Practices Commission pursuant to section 31.2. The available information revealed that there were legitimate reasons for the manufacturer of the relevant products to refuse supplies to the complainant. These included difficulties the complainant experienced in meeting the usual trade terms of the supplier and a shortage of a number of sizes of steel tube sought by the complainant.

In light of these facts, the Director concluded that the matter did not warrant further inquiry. Accordingly, the matter was discontinued and reported to the Minister on April 5, 1983.

(2) *Rubber Footwear Bottoming Materials*

This inquiry was commenced in July 1982 following the receipt of a complaint from a Toronto-based wholesaler of rubber and nonrubber materials serving the shoe repair trade. The complainant maintained that he was substantially affected in his business because of the refusal of the only domestic producer of rubber footwear bottoming materials to supply him. The complainant gave the Director reason to believe that grounds existed for the granting of an order by the Restrictive Trade Practices Commission under section 31.2. During the course of the inquiry the records of the company were examined. While the evidence so obtained was being examined, the company informed the Director that it was prepared to sell to the complainant on usual trade terms. This fact was confirmed by the complainant.

On the basis of the foregoing, the Director concluded that the matter did not warrant further inquiry. Accordingly, the matter was discontinued and reported to the Minister on April 8, 1983.

(3) *Pressure Vessel Carbon Steel Plate*

This inquiry commenced in February 1983 following the receipt of a complaint from a Toronto-based distributor of carbon steel plate suitable for pressure vessel plate applications. The complainant maintained that he was substantially affected in his business because of the refusal of the only two domestic producers of pressure vessel carbon steel plate to supply him. The complainant gave the Director reason to believe that grounds existed for the granting of an order by the Restrictive Trade Practices Commission under section 31.2.

Following interviews with the domestic producers of the subject material, one producer informed the Director that he was prepared to sell to the complainant on usual trade terms. This fact was confirmed by the complainant.

On the basis of the foregoing, the Director concluded that the matter did not warrant further inquiry. Accordingly, the Director reported the discontinuance of this inquiry to the Minister on November 9, 1983.

(4) *Plastic Products — Acrylic Sheet*

This inquiry commenced in December 1982 following the receipt of a complaint from a plastics distributor located in Montréal, Québec, that he was unable to obtain supply of a widely used type of plastic acrylic sheet from the only major Canadian manufacturer of the product and from the importing distributors.

Following interviews with potential sources of supply in the market, one company agreed to supply the complainant on usual trade terms.

On the basis of the foregoing, the Director concluded that the matter did not warrant further inquiry. Accordingly, the matter was discontinued and reported to the Minister on March 26, 1984.

SECTION 31.4

(5) *Automotive Sound Equipment*

This inquiry was initiated as a result of a six resident application received by the Director in January 1982, pursuant to section 7 of the Act for an inquiry into an automobile manufacturer's Radio Sales Program. The applicants alleged that the manufacturer had committed offences contrary to the monopoly and conspiracy provisions and was engaging in exclusive dealing and tied selling, thereby providing grounds for the issuance of an order by the Restrictive Trade Practices Commission pursuant to section 31.4.

On the basis of interviews conducted with automobile dealers and an overall study of the automotive sound market in Canada, the Director did not consider that the evidence produced in this inquiry demonstrated that a violation of the Act had taken place. Further, it was concluded that grounds did not exist for the issue of an order by the Commission in respect of the allegations of exclusive dealing and tied selling. In particular, although the radio was a "delete option," the manufacturer provided it as standard equipment on the majority of their 1983 passenger cars. The ultimate consumer was provided with this information in the 1983 new brochures, where an AM radio was listed as a standard feature, with a notation that "radio may be deleted for credit."

Accordingly, the inquiry was discontinued and reported to the Minister on April 15, 1983.

SECTION 32.2

(6) *Electrical Metering Devices*

On March 18, 1983, the Director received an application pursuant to section 7 for an inquiry into the bidding practices of the manufacturers of electrical metering devices and base adapters. In support of the allegations contained in this application, tendering information from January 1974 to the present was submitted. During the course of this inquiry further oral and documentary evidence was obtained from a number of public purchasing authorities and their representatives.

While the information obtained during the course of the inquiry revealed that there were numerous instances where identical bids had been received in response to tenders, there was no evidence to support an allegation that an agreement or arrangement existed among the companies with respect to bids in response to a tender call.

On the basis of the foregoing, the Director concluded that the matter did not warrant further inquiry. Accordingly, the inquiry was discontinued and reported to the Minister on December 8, 1983.

SECTION 33

(7) *Metal Products*

This inquiry was commenced in August 1968 following the receipt of a complaint from a Canadian fabricator of metal products to the effect that a Canadian primary metal producer was operating an illegal monopoly.

Documentary evidence obtained by search under section 10 of the Act lent support to the complainant's allegations, and in October 1975 the evidence was referred to the Attorney General of Canada pursuant to subsection 15(1). The file was submitted by the Department of Justice to outside counsel, who concluded that the evidence was insufficient to support a prosecution. The matter was then referred back to the Director.

Further searches were conducted in 1977, but the documentary evidence obtained failed to disclose a continuation of the complained-of conduct. The evidence indicated that the alleged monopolist had participated in various international arrangements, but was inconclusive concerning their effect on the Canadian market. Further, the evidence failed to demonstrate conclusively that during the period the producer possessed sufficient market power to constitute "substantial control of the class of business involved," a necessary element of the monopoly offence. The inquiry was therefore discontinued and reported to the Minister on March 30, 1984.

SECTION 38

(8) *Dinnerware*

This inquiry commenced in April 1983 following the receipt of complaints from two Montréal retailers alleging that a supplier of dinnerware had discontinued supplies to them because of their low pricing policies.

During the course of the inquiry the records of the supplier were examined pursuant to section 10 of the Act.

The evidence so obtained did not support the allegations of resale price maintenance. Accordingly, the inquiry was discontinued and reported to the Minister on September 7, 1983.

(9) *Automotive Springs*

This inquiry commenced in November 1982 following the receipt of a complaint from a Toronto distributor of automotive springs and related parts. The complainant alleged that a number of aftermarket retailers had contacted him in an attempt to induce him to refuse to supply product to a new aftermarket retailer because of its low pricing policy. In addition, it was alleged that the aftermarket retailers had agreed to act in concert to restrict the entry of any new firm in this market.

Pursuant to section 10 of the Act searches of the premises of five aftermarket retailers and three of their major suppliers were conducted in November 1982 and March 1983. Further investigation of these activities was undertaken in May 1983, when seven witnesses gave oral evidence in hearings conducted pursuant to section 17. The information so obtained did not substantiate the original allegations.

On the basis of the foregoing, the Director concluded that the matter did not warrant further inquiry. Accordingly, the matter was discontinued and reported to the Minister on September 12, 1983.

(10) *Athletic Shoes*

This inquiry commenced in July 1982 following the receipt of a complaint from a Toronto retailer that a manufacturer of athletic shoes, sports bags and other related products had ceased supplying him with the products because of his low pricing policy.

During the course of the inquiry, the records of the manufacturer were examined pursuant to section 10 of the Act. On the basis of the evidence obtained, the Director concluded that the matter did not provide sufficient evidence to establish an offence and did not warrant further inquiry. Accordingly, the inquiry was discontinued and reported to the Minister on December 19, 1983.

5. Other Matters

(1) *Business Forms*

It has come to the public's attention that there exists an inquiry into the sale and supply of business forms in the prairies region. This inquiry became public as a result of proceedings before the Saskatchewan Court of Queen's Bench concerning the application of the Charter of Rights and Freedoms to oral examinations before the Restrictive Trade Practices Commission pursuant to section 17 of the Act. On July 7, 1982, the Court issued an interim injunction to prevent any further oral examinations in Regina relating to this particular inquiry, until such time as the Court could consider the Charter matter. On December 1, 1983, the Saskatchewan Court of Queen's Bench ruled that section 17 of the Act is inconsistent with section 7 of the Charter of Rights and Freedoms and is, therefore, of no force or effect. The Court ruled, however, that section 45 of the Act is not inconsistent with the Charter. On December 12, 1983, the Crown filed an appeal with respect to the ruling on section 17.

(2) *Flat Rolled Steel and Related Products*

It has come to the public's attention that there exists an inquiry into the production, manufacture, purchase, sale and supply of flat rolled steel, plate steel bar and structural steel and related products under section 32 of the Act. This inquiry became public as a result of proceedings before the Federal Court with respect to an application by 24 companies and individuals under section 18 of the Federal Court Act for prohibition, *certiorari* and *mandamus*, against the Restrictive Trade Practices Commission, the Director and the hearing officer. This action sought to overturn certain decisions or rulings that occurred in conjunction with examinations upon oath pursuant to subsection 17(1) of the Act. The rulings of the Federal Court were appealed by both the Applicants and the Respondents to the Federal Court of Appeal. On March 15, 1982, the Supreme Court of Canada granted leave to appeal the decision of the Federal Court of Appeal. These proceedings are more fully reported in the 1982 Annual Report at page 19 (*Harold Irvine et al. v. The Restrictive Trade Practices Commission et al.* (1981), 56 C.P.R. (2d) 83).

CHAPTER IV

RESOURCES BRANCH

1. Activities

The Resources Branch is responsible for the conduct of all inquiries under the Act with respect to the activities of firms in the Canadian resource industries. In this context resource industries are considered to include agriculture; fishing and all food processing; trapping and all fur processing; the forest industry including all stages of manufacture and distribution of wood and wood products, including pulp and paper; the production, mining and primary processing of all minerals; and the production and distribution of energy, including electrical power, coal and petroleum products.

The Branch analyzes complaints and evidence from various sources pertaining to allegedly anticompetitive situations in resource sectors and, when warranted, conducts an inquiry. Any apparent restriction of competition is examined in order to determine whether there is reason to believe that a violation of Part V of the Act has occurred or that grounds exist for the making of an order by the Commission under Part IV.1 of the Act.

The Branch is concerned with the assessment of the competitive implications of specific regulatory activities as they pertain to the resource industries. In this context, pursuant to section 27.1 of the Act, the Branch assists the Director with his representations before federal regulatory boards in respect of the maintenance of competition in connection with matters being heard by such boards.

The Branch is also concerned with inquiries relating to the patent and trade mark provisions of section 29 of the Act in relation to the resource industries. It also maintains a general surveillance of competitive activities and competition policy issues in those industries for which it is responsible so as to identify problem areas requiring analysis or investigation. Further, the Resources Branch participates in interdepartmental committees and provides input into, and analysis of, competition issues arising from acquisitions under review by the Foreign Investment Review Agency.

2. Proceedings Following Direct Reference to the Attorney General of Canada Pursuant to Subsection 15(1) of the Act

SECTION 32

(1) *Uranium Inquiry*

As previously reported, this inquiry into the marketing of uranium in Canada began on September 30, 1977, at the direction of the then Minister, the Honourable Warren Allmand.

In May 1981 the evidence obtained in the inquiry was referred to the Attorney General of Canada. On July 7, 1981, an Information containing one count under paragraph 32(1)(c) was laid at Toronto against six Canadian uranium-marketing companies: Denison Mines Ltd.; Eldorado Nuclear Ltd./Eldorado Nucléaire Limitée; Gulf Minerals Canada Ltd./Minéraux Gulf du Canada Limitée; Rio Algom Limited; Uranerz Canada Ltd.; and Uranium Canada Ltd./Uranium Canada Limitée. Eighteen other corporations or agencies, all from outside Canada, and three individuals were also named though not charged. The Information alleges that the offence took place between September 1, 1970, and April 1, 1978.

Two of the companies charged, Eldorado Nuclear Ltd. and Uranium Canada Ltd., are federal Crown corporations. In March 1982, counsel for these companies brought a motion in the Supreme Court of Ontario seeking a Writ of Prohibition to prohibit the Provincial Court

of Ontario from proceeding with a preliminary inquiry involving them. The basis of the application was the contention that the two companies were at all times agents of the Crown and that as such they enjoyed immunity from prosecution. On April 23, 1982, decision was rendered in favour of the companies. On June 11, 1982, the Court of Appeal for Ontario upheld the decision. Following the granting of leave to appeal on September 22, 1982, the matter was argued on January 27, 1983, before the Supreme Court of Canada.

On December 15, 1983, the Supreme Court of Canada ruled that the Crown corporations Eldorado Nuclear Ltd. and Uranium Canada Ltd., although capable of acting in a corporate capacity as nonagents of the Crown had *prima facie* acted as Crown agents and were therefore immune from the terms of the Combines Investigation Act. The ruling by the Supreme Court upheld immunity rulings by lower courts. Following the ruling, the Attorney General decided not to pursue the charges against the privately owned uranium companies.

Bill C-29, An Act to amend the Combines Investigation Act, tabled in Parliament on April 2, 1984, contains a provision which states that federal and provincial Crown corporations that are agents of Her Majesty, engaging in commercial activities in actual or potential competition with privately-owned enterprises, are bound by the Combines Investigation Act.

(2) *Hogs — Alberta*

This inquiry commenced in February 1980 following the receipt of information alleging that the major meat packers operating in the Province of Alberta had agreed to share slaughter hogs offered for sale by the Alberta Pork Producers Marketing Board on a predetermined percentage basis; to purchase slaughter hogs at an agreed price or within a given price range; and agreed on wholesale prices for pork or pork products.

Documents on the premises of the Alberta Pork Producers Marketing Board were examined pursuant to section 10 of the Act in February 1980. Hearings before the Restrictive Trade Practices Commission were held during 1980 and 1981 in Calgary, Edmonton, Ottawa and Toronto.

The evidence obtained in the inquiry was referred to the Attorney General of Canada on December 21, 1981. On February 19, 1982, an Information containing two counts under paragraph 32(1)(c) of the Act was laid at Calgary against Burns Foods Limited, Canada Packers Inc., Intercontinental Packers Limited, Red Deer Packers Ltd., and Swift Canadian Co. Ltd.

The evidence obtained during the inquiry indicated that another meat packer, Gainers Limited, was a participant in the alleged agreements. Since this company was scheduled to be voluntarily wound up as of April 30, 1981, it could not be charged with the others. However, an application pursuant to the Alberta Companies Act was filed requesting that the dissolution of Gainers Limited be made void. The matter was settled by a consent order filed with the court on June 4, 1982. A revised Information adding Gainers Limited, changing the name of another accused and deleting a third, was laid on June 24, 1982, against the following companies:

Burns Food Limited
Canada Packers Inc.
(formerly Canada Packers Ltd.)
Eschem Canada Inc.
(formerly Swift Canadian Co. Ltd.)
Gainers Limited
Intercontinental Packers Limited

The preliminary hearing commenced on January 31, 1983. On March 14, 1983, submissions were made concerning the retroactive application of the Canadian Charter of Rights and Freedoms following a decision of the Alberta Court of Appeal declaring section 10 of the Act unconstitutional. On September 19, 1983, the presiding judge ruled on the motion in favour of the applicants and declared certain documentary evidence to be inadmissible.

On December 9, 1983, in the Provincial Court of Alberta at Calgary, three of the accused, Burns, Eschem and Gainers, waived the preliminary hearing. On the same day, charges were laid in the Alberta Court of Queen's Bench at Edmonton against the three companies alleging a conspiracy to prevent or lessen unduly competition in the purchase of slaughter hogs in the Province of Alberta for the period from December 9, 1969, to December 31, 1974. These three accused companies pleaded guilty and were each fined $125,000.

The two other companies, Canada Packers and Intercontinental, continued with the preliminary hearing, which ended on February 23, 1984. The presiding judge reserved his decision until May 24, 1984.

(3) *Gasoline Service Stations — Rouyn-Noranda*

This inquiry commenced in April 1982 following the receipt of two complaints from Rouyn-Noranda alleging that most of the gasoline retailers operating in the area had held a meeting during which it was decided to increase retail prices. It was alleged that this agreement was implemented the following day.

Hearings were held in September 1982, and January 1983. The evidence obtained was referred to the Attorney General of Canada in April 1983. On June 16, 1983, Informations containing one count under paragraph 32(1)(c) were laid at Rouyn against 15 gasoline retailers and four oil company representatives. The preliminary hearing is scheduled for June 1984.

(4) *B.C. Tree Fruit*

This inquiry was initiated in April 1981 following the receipt of an application from six Canadian residents pursuant to section 7 of the Act requesting that the marketing activities of the B.C. tree fruit industry be investigated. The applicants alleged that the organizations operating under the one-desk marketing system, to protect their dominant market position, had engaged in conduct contravening section 32 of the Act.

In May and June 1981, documents were examined on the premises of the British Columbia Tree Fruit Marketing Board, the British Columbia Fruit Growers' Association and its subsidiary companies, B.C. Tree Fruit Limited and Sun-Rype Products Limited, as well as on the premises of 14 packing houses pursuant to section 10 of the Act. The evidence obtained in the inquiry was referred to the Attorney General of Canada on March 1, 1983.

On August 31, 1983, an Information containing three counts under paragraphs 32(1)(a) and (c) of the Act was laid at Kelowna against the British Columbia Fruit Growers' Association, Charles Bernhardt, Richard Bullock, John Bullock, Nigel Taylor, Arnold Pedersen, William Dell, Westbank Orchards Limited, Creston Co-operative Packers, the Vernon Fruit Union, Lake Area Co-operative Growers Association, Naramata Co-operative Growers Exchange, Monashee Co-operative Growers Association and Kelowna Growers Co-operative. On February 13, 1984, a revised Information deleting two counts relating to the sale and supply of tree fruit was laid against the same parties. The preliminary hearing commenced on February 13, 1984, and was completed on February 22, 1984. The presiding judge reserved his decision in this matter to March 12, 1984, on which date he ordered all the accused to stand trial.

(5) *Plywood and Other Related Wood Products*

This inquiry commenced in October 1977 following the receipt of an application from six Canadian residents pursuant to section 7 of the Act. The applicants alleged that the British Columbia based integrated forest product companies, who were the major distributors of softwood plywood, pursued a pricing strategy that discriminated against their competitors, the small nonintegrated building products distributing companies.

On the basis of this complaint, and other matters that had come to the attention of the Director regarding anticompetitive practices in this industry, the Director commenced a formal inquiry. During the fall of 1977, documents on the premises of numerous plywood pro-

ducers were examined pursuant to section 10 of the Act. The documentary evidence, while it did not wholly substantiate the allegations made by the complainants, indicated a number of possibly restrictive trade practices among plywood producers.

The evidence indicated that the plywood producers operated a delivered pricing system where purchasers were assessed excess freight charges above and beyond actual freight costs. This was achieved in part by industry use of a weight schedule for plywood shipments that was approximately 18 per cent more than actual plywood weights, and also by the use of Vancouver as a basing point for Alberta, Saskatchewan and Manitoba destinations, on shipments originating from mills in the B.C. interior.

Furthermore, evidence was found suggesting the existence of a number of agreements either not to produce certain products which would reduce the producers' return from higher-priced panel products, or to restrict these products to certain channels of distribution.

The documentary evidence obtained also showed that a small working group, consisting entirely of representatives of west coast plywood producers and chaired by the Council of Forest Industries (COFI) plywood manager, had substantial control over the procedure for changing plywood standards. The evidence indicates that restriction of competition, especially from competitive products of U.S. origin, was a major concern of the producers in the setting of CSA standards 0151 and 0152.

Finally, it was found that during a period when a slowdown in construction activity had substantially reduced the demand for plywood, the plywood producers initiated a report which disseminated detailed statistics on production, showing the actual weekly production of each producer as a percentage of each producer's capacity. The report appeared designed to ensure that traditional market shares were maintained during the period of the downturn in demand.

In March 1983, the evidence in the inquiry was referred to the Attorney General of Canada. The Department of Justice concluded that an offence could not be proved beyond a reasonable doubt and that a prosecution was, therefore, not warranted.

On the basis of this opinion, and the increasing market share of substitutes for plywood such as waferboard, it was decided that further inquiry was not justified and, accordingly, the Director closed his file on the matter.

SECTION 38

(6) *Imperial Oil Limited — Gasoline*

This inquiry commenced in November 1981 following the receipt of a complaint from an independent reseller of petroleum in Waverley, Ontario, alleging that he had been refused supply of gasoline by Imperial Oil Limited because of his low pricing policy. During the course of the inquiry, the records of Imperial Oil Limited were examined pursuant to section 10 of the Act.

On February 11, 1982, the evidence obtained in the inquiry was referred to the Attorney General of Canada. On February 25, 1982, an Information containing one count under paragraph 38(1)(a) and one count under paragraph 38(1)(b) of the Act was laid at Toronto against Imperial Oil Limited. The preliminary hearing was held at Toronto on August 19 and 20, 1982, and the company was subsequently ordered to stand trial on the count under paragraph 38(1)(b). The trial commenced on March 26, 1984, but at the end of the fiscal year a decision had not been rendered.

3. Applications by the Director to the Restrictive Trade Practices Commission under Part IV.1

There were no applications under this Part during the year.

4. Discontinued Inquiries Reported to the Minister in Accordance with Subsection 14(2) of the Act

SECTION 32

(1) *Sugar*

This inquiry commenced in June 1976 following the receipt of an application pursuant to section 7 of the Act alleging that Canadian sugar refining companies had continued to violate the Act after charges were laid on May 31, 1973. (The legal proceedings following these charges were before the courts until July 1980, when the Supreme Court of Canada acquitted the accused sugar refining companies.) A thorough and orderly investigation was made of the allegations, but the facts as determined by this investigation did not provide the Director with reason to believe that the Act had been violated after the prosecution was commenced.

In November 1978, counsel for the applicants provided the Director with additional information concerning alleged anticompetitive exclusionary practices by Canadian sugar refiners to prevent the establishment of another Canadian sugar refinery. These allegations were also thoroughly investigated and every effort was made to obtain information concerning any direct or indirect actions by the established Canadian sugar refiners to interfere with the efforts of others to get into the sugar refining business. No indications of this were found, apart from the ones that were put before the Court at the trial.

In March 1979, the Director wrote to counsel for the applicants, setting out the investigative steps taken by his staff and the facts determined by the investigation. The Director also advised counsel for the applicants that he was considering discontinuing the inquiry but would not do so until he had heard from counsel.

In October 1979, counsel for the applicants wrote to the Director, advising that he had informed the applicants of the contents of the Director's letter of March 1979 and, after further discussions with the applicants, closed his files on the matter. Counsel also advised that he had informed the applicants that he was satisfied "that the Director had undertaken a very thorough and orderly investigation of the complaint." Accordingly, the inquiry was discontinued and reported to the Minister in October 1979. The then Minister wrote to the applicants, advising that he considered the matter closed. In June 1980, one of the applicants wrote to the Minister of Consumer and Corporate Affairs of the new government, requesting another investigation. The then Minister, after receiving a report from the Director of Investigation and Research, which reviewed the files of his predecessor and the correspondence with counsel for the applicants, wrote to the applicant, advising him that he saw no justification for pursuing the inquiry.

(2) *Horsemeat Industry*

This inquiry commenced following receipt of a complaint in November 1981 alleging that the two largest horsemeat processors in western Canada had agreed to control the prices paid for live horses at livestock auctions.

According to the complainant, three different methods were used to influence the level of prices. One method involved the flipping of a coin prior to an auction for the purpose of allocating the purchase of odd and even numbered lots of horses between the two companies. By this method, the buyer from each company purchased the required number of slaughter horses without rivalry and at low prices. Another method involved agreeing on the mix of horses to be purchased by weight. When this method was used each company instructed its buyer to acquire either lean or heavy horses at alternating auctions, and on the maximum price to be paid. A third method involved swapping of auctions. When this method was used each company instructed its buyer to attend only those auctions that the other had agreed to forgo. These allegations were corroborated by another individual connected with the horse trade who had business dealings with the complainant. The complainant claimed that documentation supporting his allegations was available on the premises of one of the horsemeat processors.

Documents on the premises of the horsemeat processors were examined in July 1982, pursuant to section 10 of the Act. A thorough review of the documentary evidence failed to establish that the purchasing policies for slaughter horses at auctions, employed by the two companies, were coordinated by an agreement or arrangement as alleged. In summary, the information, both oral and documentary, revealed that the allegations made had no support in fact and provided no reason to believe that furtherance of the inquiry would produce any evidence to the effect that the Act had been or was about to be violated. Accordingly, the inquiry was discontinued and reported to the Minister on March 28, 1984.

SECTIONS 32, 34 AND 38

(3) *Propane — Eastern Ontario*

This inquiry was commenced in January 1982 following receipt of complaints that an eastern Ontario propane distributor/retailer had issued threats to competitive distributor/retailers with a view to forcing all competitors to discontinue their then-current retail price war and to agree to raise their retail prices to a common level. Two of the complainants provided sworn affidavits attesting to the utterance of the threats by the above-mentioned distributor/retailer.

In April 1982, searches under the authority of section 10 of the Act were conducted at the premises of all of the retailers and distributors participating in the market. None of the seized documents corroborated the contents of either of the affidavits. Moreover, it was concluded that none of the evidence was sufficiently strong to support or substantiate a charge under subsection 32(1), paragraph 34(1)(c) or section 38 of the Act. It was therefore decided to discontinue this investigation, and its discontinuance was reported to the Minister on March 30, 1984.

5. Director's Representations to Regulatory Boards

(1) *Ontario Energy Board Hearings Concerning Ontario Industries Using Natural Gas as a Feedstock*

The Ontario Energy Board commenced public hearings in July 1983, for the purpose of examining and reporting on a number of matters affecting Ontario industries which use natural gas as a feedstock, particularly those involved in manufacturing ammonia-based products. The Board was directed by the Government of Ontario to report on the market environment in which the "Affected Industries" operate, including how natural gas prices in Ontario affect the competitive position of Ontario manufacturers in the North American market. The Board was also required to report on the effects that proposals by the "Affected Industries" regarding alternate methods of purchasing their natural gas requirements would have on Ontario gas utilities and their other customers. In addition, the Board was to report on the nature, extent and causes of any disparity in rates charged among the Ontario gas utilities to the "Affected Industries" as well as on the advisability of introducing a common rate across Ontario for natural gas for feedstock purposes.

Twenty-one interventions were filed by producers, transmittors, distributors, consumers of gas and other interested parties. The Director intervened in these proceedings in order to assist the Board in its assessment of the competitive implications of proposals made by other participants and to support proposals that would result in a regulatory system that would be more responsive to dynamic market forces.

The price for natural gas to the Ontario market is subject to regulation by both the Alberta and the federal governments, who jointly set the price at the Alberta border. The National Energy Board regulates the charges of TransCanada PipeLine Limited, the sole transporter of gas from Alberta to Ontario, for transporting the gas from the Alberta border to the gas utilities, in Ontario. The Ontario Energy Board regulates the distribution activities

of the Ontario gas distribution utilities, including the approval of rates for gas sold to customers.

Natural gas for the Ontario market is currently purchased from Alberta gas producers by TransCanada, carried through its facilities, then sold by TransCanada to contracted Ontario gas distribution utilities and finally sold by these utilities to Ontario industrial, commercial and residential users. During the period when demand for natural gas was rapidly increasing, TransCanada contracted with Alberta gas producers for supplies to meet the then-forecast evergrowing demand requirements of the future. For a number of reasons, including declining demand in the export market, energy conservation, the recession and high administered prices for gas delivered outside Alberta, the forecasted demand did not materialize. TransCanada then found itself in the position of being unable to take delivery of substantial quantities of gas for which it had contracted with producers. In order to obtain relief from this liability, TransCanada entered into the "TOPGAS" agreement with its contracted producers and a syndicate of Banks, which would act as a financing vehicle to stretch out TransCanada's purchase commitments equitably among the contracted producers until such time as TransCanada had disposed of its excess inventory. This agreement had the effect of excluding potential new suppliers of gas to the Ontario market and reserving the Ontario market, including its growth potential, to TransCanada's contracted producers at least until the end of this decade.

At the hearings, the problem facing Ontario gas-using industries was identified as regulated natural gas prices for a vital production input that were substantially higher than market-determined natural gas prices available to their competitors in the United States, Alberta and elsewhere in the world. As a result, efficient Ontario industries found themselves in a competitively disadvantageous position in both domestic and foreign markets.

The alternative supply arrangements proposed by Ontario-based industrial gas users were variously referred to as "direct accessing," "direct purchases," "backward (or vertical) integration" and "the integration alternative." The Board adopted the term "direct purchase" in referring to these proposals. In essence, direct purchasing would require the Ontario industrial gas user to:

—acquire an interest in Alberta gas production either by investment in exploration or by purchase of existing reserves;

—obtain a permit from the Government of Alberta to remove gas from Alberta or obtain access to an existing permit that is not fully utilized;

—contract with TransCanada for transportation of the gas from Alberta to Ontario;

—contract with an Ontario utility for movement of the gas within Ontario to the industrial gas user's plant.

The benefit of direct purchase lies in the potential production profits accruing to the Ontario industrial gas user in his role as an equity owner in gas production in Alberta. It would probably not directly affect gas prices in Ontario because of the regulatory structure. Some gas producers in Alberta could benefit while others could lose.

TransCanada, Dome Petroleum Limited (then a shareholder in TransCanada and a major gas supplier) and two of the three Ontario gas utilities (Consumers' Gas, and Northern and Central Gas) opposed the direct purchasing proposals. Their position essentially was that the cause of present problems faced by Ontario-based industrial users was the inflexibility of the Alberta Border Price, and that the current over supply situation would not be remedied by direct purchase arrangements because direct purchases would merely displace gas presently supplied to TransCanada under long-term supply contracts. Further, TransCanada stated that it would contravene the "Topgas" agreement if it transported gas of direct purchasers that would in effect be displacing gas that it had contracted to purchase. The two Ontario gas utilities that opposed direct purchases were of the view that the traditional system was working well and that any changes such as direct purchases would only disrupt the system and result in additional costs that would have to be borne by all Ontario gas producers.

In his final submission to the Board, the Director supported the concept of direct purchase because of the positive effects on competition in Ontario and Alberta. The Director also stated that he believed that there was a conflict of interest between TransCanada's business as a buyer and seller of gas and its transportation service. He saw the effect of direct purchase arrangements as diluting both TransCanada's monopsony in buying gas for Ontario and its monopoly in selling such gas to Ontario markets.

In its report of February 10, 1984, the Ontario Energy Board recommended that:

(a) direct purchasing of natural gas, regardless of end use, by any Ontario user be endorsed by the Government of Ontario as being in the long-term public interest, provided the interests of the Ontario utilities and their customers be protected;

(b) the Government of Ontario give consideration to amending the Ontario Energy Board Act as required to fully implement direct purchases;

(c) the Government of Ontario give consideration to supporting the proponents of direct purchasing before the relevant regulatory bodies in other jurisdictions;

(d) the Ontario Energy Board be authorized to receive and review in public rate hearings or such other time as is appropriate any proposed purchase arrangements concerning natural gas to be delivered for use in Ontario, with the objective of approving such arrangements if, in the opinion of the Board, they are in the public interest and adequately protect the interests of other parties in Ontario;

(e) the proposal for a common feedstock rate be rejected by the Government; and

(f) if it is deemed appropriate by the Government to assist ammonia producers in Ontario, a direct subsidy be considered by the Government in preference to the indirect subsidy by means of a common feedstock rate.

(2) *National Energy Board Hearings on Heavy Fuel Oil*

Under the National Energy Board Act licences are required for both the import and export of heavy fuel oil. In the spring of 1983, the Board held a public inquiry into the following matters:

(a) the extent to which the availability of heavy fuel oil in Québec and the Atlantic Provinces may affect the marketing of natural gas;

(b) actual and potential developments affecting the availability in eastern Canada of domestically refined heavy fuel oil, including but not limited to changes in refinery configuration and operations and variability in the refining of heavy crude oil;

(c) the means by which and the extent to which heavy fuel oil could be displaced by other sources of energy having regard to federal government policies, including those enunciated in the National Program 1980 and the Update 1982;

(d) the impact on traditional importers of heavy fuel oil if the Board denied all or substantially all applications for licences to import heavy fuel oil into the Atlantic Provinces and the Provinces of Ontario and Québec;

(e) the impact on traditional importers of heavy fuel oil if the Board denied all or substantially all applications for licences to import heavy fuel oil into the Atlantic Provinces and the Provinces of Ontario and Québec; and

(f) suggestions as to criteria or guidelines that the Board might consider in deciding applications for licences for the importation or exportation of heavy fuel oil.

Over 40 submissions were filed before the Board by various groups, including refiners, gas distributors, independent marketers, industrial consumers, utilities and representatives of five eastern provinces. The Director intervened pursuant to section 27.1 of the Act.

In his submission the Director addressed the competition policy issues concerning:

(a) the impact of the rationalization of the refining industry in eastern Canada on the various participants in the petroleum products market;

(b) the effect of the denial of imports on the availability of heavy fuel oil to traditional customers and on the competitive position of the unintegrated suppliers in the market;

(c) the disciplinary effect the import option imposes on the domestic petroleum market;

(d) interfuel competition and substitution; and

(e) the extent to which increased natural gas consumption, at the expense of competing energy forms, has a favourable impact on the economic efficiency of gas distribution.

The Director advocated that imports and exports of heavy fuel oil should be permitted to flow as freely as possible, allowing heavy fuel oil to be marketed in the most economical manner. He stressed that care must be taken to avoid creating artificial barriers that would price heavy fuel oil above electricity and natural gas, with which it competes. He also recommended that the least-cost energy alternative should be the main criterion on which the Board bases its decision regarding applications for imports, and that imports and exports of heavy fuel oil should be permitted to flow as freely as possible.

In its report issued in June 1983, the National Energy Board announced that it did not intend to make any basic change in the way in which it assessed and decided applications for the import and export of heavy fuel oil in eastern Canada. The Board concluded that a continuing balance of domestic production with demand could not be achieved without imports and exports; that transportation of domestic heavy fuel oil to the Atlantic Provinces would be uneconomic; that elimination of heavy fuel imports would not necessarily resolve the difficulties hampering gas penetration of the Québec industrial market; and that the import option provided essential price competition for independent marketers and for consumers in areas where gas is not an alternative energy source.

(3) *National Farm Products Marketing Council — Submission on the Establishment of a National Agency for Broiler Type Chicken Hatching Eggs*

In November 1983, the Director submitted a brief in response to the Notice of Public Hearing by the National Farm Products Marketing Council to enquire into the merits of establishing a national marketing agency for broiler chicken type hatching eggs. The proposal for the agency put forward by the Canadian Broiler Hatching Egg Producers' Association sought approval for powers to determine prices on a cost-of-production basis; set production quotas; regulate interprovincial and export trade; and impose import controls on broiler type hatching eggs, broiler chicks, and primary and multiplier breeders, males and females. In his submission, the Director stated that he did not favour the establishment of a national board with supply management powers on the grounds that supply management of broiler egg production would have negative implications for efficiency, performance, prices and equity in the entire broiler production-marketing system. Data were presented and studies were cited to show that a supply management scheme which set controls on output, prices, and movement of broiler type hatching eggs would:

(a) lower efficiency and provide excessive returns to resources employed in broiler type hatching egg production;

(b) put a halt to the dynamic changes in scale that have been occurring;

(c) cement production patterns and enforce rigidities in production within and between provinces in addition to those that already exist in the broiler production-marketing system as the result of supply management at the broiler farm-gate level;

(d) exacerbate inequities in income distribution within the farm community: the benefits would accrue to broiler egg producers in proportion to their share of the total output rather than their need;

(e) heighten conflict in the broiler egg production/hatching/broiler production-marketing system and increase the complexity of decisions that have to be made by the broiler egg agency, as a result of the agency having to grapple with the problem of sourcing eggs domestically and from abroad;

(f) lead to the inclusion of higher costs for chicks in the cost-of-production formula for broilers and, in turn, to higher prices for consumers for this commodity.

The hearing adjourned in December 1983, and recommenced in late January 1984. The Producers' Association, as instructed by the National Farm Products Marketing Council, presented a written reply to the Director's submission which took exception to the findings and conclusions of the Director as to the detrimental effects of supply management arrangements for broiler eggs with cost-of-production pricing. The Director prepared a rejoinder containing new information on broiler egg prices and imports of eggs and chicks to oppose the position taken in the Association's reply and to further reinforce his view that a national marketing agency for broiler eggs with supply management powers is not needed. The Natural Farm Products Marketing Council will present its findings and make a recommendation on this matter in a report to the Minister of Agriculture expected in May 1984. The Director's brief was one of only two submissions which opposed supply management for broiler type chicken hatching eggs.

6. Activities Related to Agricultural Policy

During the year representatives of the Director took an active role in interdepartmental discussions on alternative marketing policies for domestic feed grains with a view to enhancing competition and efficiency. In addition, members of the Director's staff were involved in interdepartmental deliberations to assess the competitive implications of alternative marketing and stabilization programs for the red meat sector as well as for marketing of potatoes in Canada.

7. Other Matters

(1) *Petroleum Industry — Section 47*

This inquiry was referred to in previous Annual Reports.

During the fiscal year, the Restrictive Trade Practices Commission conducted hearings into the refining and marketing sectors of the industry. Since the hearings commenced in December 1981, over two hundred witnesses have appeared before the Commission. On February 21, 1983, the Commission held a special hearing involving the Director, the oil companies and other interested parties in the inquiry, following which the Commission laid down a schedule for the completion of the inquiry. It was anticipated that the hearings would conclude with final argument in the fall of 1983. The hearings ended on December 15, 1983. On February 22, 1984, the Director filed Final Argument. The Final Arguments of the oil companies were filed between March 20 and March 31, 1984. The Restrictive Trade Practices Commission then reconvened the hearings for April 24, 1984, to receive oral clarifications on the written Arguments and to hear the Director's Remedy Proposals.

(2) *Biscuits*

The Bureau is engaged in a general surveillance of competitive activities and competition policy issues both independently and arising from acquisitions under review by the Foreign Investment Review Agency. In the course of reviewing the intended acquisition of Associated Biscuits of Canada Limited by Nabisco Brands Ltd. the Director became concerned that this acquisition might lead to a less competitive market situation. Consequently, the Director consulted with representatives from Nabisco Brands Ltd. and FIRA, to encourage Nabisco to adopt marketing strategies that would maintain the competitive nature of the industry. In December 1983, after Nabisco agreed to operate Associated Biscuits as an independent entity, FIRA gave approval to the acquisition.

(3) *Rapeseed and Other Non-Board Grains*

This inquiry commenced in July 1976, following the receipt and corroboration of information concerning an agreement among primary elevator operators that mutually determined the prices those operators paid producers for grains and oilseeds not marketed under the auspices of the Canadian Wheat Board. During July and August 1976, documents were examined on the premises of twelve grain elevator companies, cooperatives and associations pursuant to section 10 of the Act. The evidence obtained during the course of the inquiry was referred to the Attorney General of Canada under subsection 15(1) in September 1981. The Attorney General's representative, after reviewing the evidence, recommended that before charges were laid a number of potential witnesses be examined orally pursuant to section 17. As a result, a sequence of hearing proceedings was scheduled before the Restrictive Trade Practices Commission to commence on October 31, 1983, in Winnipeg, Manitoba. On October 27, 1983, four of the potential accused in this inquiry filed originating Notices of Motion in the Manitoba Court of Queen's Bench seeking to quash, prohibit or otherwise stay the scheduled section 17 proceedings. The four applicants sought and were granted an order for short leave and, accordingly, the procedural aspects of the matter were heard on October 28.

The applicants submitted in support of their Motions that various legal rights had been denied, including that: the right contained in paragraph 11(b) of the Charter "to be tried within a reasonable time" could not be fulfilled; the jurisdiction to proceed had been lost by virtue of delay; the section 10 search was inconsistent with the section 8 Charter right "to be secure against unreasonable search or seizure"; the evidence obtained under section 10 violated a Charter right and its use "would bring the administration of justice into disrepute"; the provisions of Part II of the Act were inconsistent with the Charter and thus of no force or effect; and the procedure established by section 45 was inconsistent with the Charter and similarly of no force or effect.

On hearing the motion, the Court of Queen's Bench accepted jurisdiction to deal with all the matters raised because of their constitutional dimension and then granted an adjournment *sine die* so that counsel could prepare their arguments on the merits. Counsel are awaiting the outcome of similar cases in the Manitoba courts before bringing this matter back on for hearing.

CHAPTER V

Services Branch

1. Activities

The main function of the Services Branch is to analyze complaints and other evidence from a broad variety of sources with respect to alleged restrictions of competition in the service and distribution industries and to conduct inquiries into those situations where inquiry is warranted. The Services Branch is responsible for all wholesale and retail distribution activities not otherwise assigned to the Manufacturing or Resources Branch and for all other services traditionally regarded as such including finance, insurance and business, professional and personal services of all kinds, but not including the distributing sectors of vertically integrated industries, in which the major activity of the industry falls within the responsibilities of the Manufacturing or Resources Branch. The Services Branch is not responsible for construction, communications, or distribution of forestry or energy products research, or for representations to federal boards, commissions or other tribunals pursuant to section 27.1 of the Act that fall within the responsibilities of the Regulated Sector Branch.

The Branch deals with violations of Part V of the Act not in the nature of misleading advertising or deceptive marketing practices and with situations which may be reviewable under Part IV.1. It is also concerned with inquiries relating to proceedings under the patent and trade marks provisions of section 29 of the Act, and maintains a general surveillance of competitive issues and activities in Canada in those industries for which it has responsibility. In addition, it participates in interdepartmental committees and provides input with respect to competition policy in relation to proposed mergers under review by the Foreign Investment Review Agency.

2. Proceedings Following Direct Reference to the Attorney General of Canada Pursuant to Subsection 15(1) of the Act

SECTIONS 32 AND 33

(1) *Outdoor Advertising*

This case arose out of an inquiry by the Director into the manufacturing, producing, transporting, acquiring, supplying, storing and otherwise dealing in outdoor printed posters, outdoor poster panels and related products.

The evidence obtained in the inquiry was referred to the Attorney General of Canada in July 1980 and an Information containing two counts under paragraph 32(1)(c) of the Act covering the periods January 1, 1973, to June 30, 1976, and July 1, 1976, to April 1, 1981, was laid at Toronto on April 2, 1981, against the following companies:

Mediacom Industries Inc.— Les Entreprises Mediacom Inc.
Mediacom Inc.
HOAL Investments Ltd.
Jim Pattison Enterprises Ltd.
Neonex Consumer Group Ltd.
Seaboard Advertising Co. Ltd.

In addition, the following were named as unindicted coconspirators:

Gould Outdoor (Posters) Limited
John M. Gould Limited
J.C. Teron Company Limited
Outdoor Advertising Association of Canada

The above Information also contained two counts under section 33 covering the periods January 1, 1973, to December 31, 1975, and January 1, 1976, to April 1, 1981, against the following companies:

Mediacom Industries Inc.— Les Entreprises Mediacom Inc.
Mediacom Inc.

In addition, the following were named as party or privy to the formation of the monopoly:

Outdoor Advertising Association of Canada
Gould Outdoor (Posters) Limited
John M. Gould Limited
J.C. Teron Company Limited
HOAL Investments Ltd.
Jim Pattison Enterprises Ltd.
Neonex Consumer Group Ltd.
Seaboard Advertising Co. Ltd.

The preliminary hearing commenced on January 20, 1982, at which time the accused companies moved to quash the Information. The motion was subsequently dismissed on the grounds that a magistrate presiding at a preliminary inquiry has no authority to quash an Information.

The accused then made application to the Supreme Court of Ontario to quash the Information. The application was heard on February 23 to February 25, 1982. On February 25, 1982, the application was dismissed on the grounds that the earlier decision was not reviewable and that the Information charged offences known to law and was therefore not a nullity as had been argued by the accused.

On March 19, 1982, the decision of the Supreme Court of Ontario was appealed to the Ontario Court of Appeal. The appeal was heard on May 27, 1982, at which time it was dismissed. On June 21, 1982, the accused sought leave to appeal to the Supreme Court of Canada but, on August 9, 1982, leave to appeal was refused.

The preliminary hearing resumed on January 31, 1983, and continued until February 11, 1983. The Crown's argument was heard on February 21 to 22, 1983, and the accused's argument was heard on May 10 to 12, 1983. On October 4, 1983, the accused were ordered to stand trial on all counts. The trial has been set for February 11, 1985.

(2) *Daily Newspapers*

A formal inquiry was commenced following the closing on August 27, 1980, of the *Ottawa Journal* and *Winnipeg Tribune* and the sale by Thomson Newspapers Limited of its daily newspaper properties in Montréal and Vancouver to Southam Inc.

Evidence obtained in this inquiry was referred to the Attorney General of Canada on January 15, 1981, and on May 1, 1981, an Information containing a total of seven counts under sections 32 and 33 of the Act (described in detail in the 1982 Annual Report) was laid at Toronto. On May 5, 1982, Thomson Newspapers Limited, F.P. Publications Limited, Southam Inc. and certain subsidiary corporations were ordered to stand trial.

On June 17, 1982, the Attorney General of Canada signed an indictment setting out eight counts arising from the above matters.

Mr. John A. Tory, Mr. George N.M. Currie and Mr. Gordon N. Fisher, being principal executives of Thomson, F.P. and Southam respectively, were named in the above charges as unindicted coconspirators or parties. The trial commenced in the Supreme Court of Ontario on September 19, 1983. Following the conclusion of the Crown's case, the defence moved for a directed verdict of not guilty on all counts, claiming that the Crown had failed to show some evidence on each element of each count. The Court acquitted the accused on five of the eight counts on October 28, 1983.

On December 9, 1983, the accused were acquitted on the remaining conspiracy and merger counts. Basically, the Court rejected the inferences drawn by the Crown from documents and oral evidence, and accepted the testimony of defence witnesses that the transactions in the four cities were independent business matters made coincident only for the purpose of full disclosure. The Winnipeg merger count failed because the lessening of competition flowed from the independent decision to close the *Tribune*, and not from the orderly disposition of its assets.

A notice of appeal was filed in respect of the acquittals on counts 2, 4 and 6, and a motion for the extension of the time period for the filing of an appeal from the December 9 verdict was also made. After reviewing the decisions of the Supreme Court of Ontario the appeals were abandoned on February 28, 1984.

A separate Information was laid on May 1, 1981, alleging that William J. Carradine unlawfully attempted to impede or prevent an inquiry under the Act in September 1980, contrary to subsection 41(1). In a separate appearance on January 9, 1984, the Crown entered a stay of proceedings in respect of the charge.

Sections 32 and 38

(3) *Metropolitan Toronto Pharmacists Association*

This inquiry commenced in May 1979 upon the receipt of information that the Metropolitan Toronto Pharmacists Association had agreed to implement a boycott of the third-party drug-prepayment plan administered by Green Shield Prepaid Services Inc., a major nonprofit insurer. The insurer had revised the ingredient cost paid to pharmacists for drugs to reflect the volume discounts now common in the industry, which has moved from independent pharmacists purchasing in limited quantities to buying groups and chains of outlets purchasing in bulk. As a result of the alleged boycott and other harassment techniques, the insurer was compelled to reinstate its prior schedule of fees. Information obtained in the course of the investigation, including documentary evidence obtained under section 10 of the Act, was referred to the Attorney General of Canada on August 15, 1980.

An Information was laid on June 10, 1981, against seven individuals and the Association alleging offences under paragraph 32(1)(c) and paragraph 38(1)(a) of the Act between March 1979 and January 1980. Subsequently, the charge under paragraph 38(1)(a) and all charges against the individuals were withdrawn. Thus, the Metropolitan Toronto Pharmacists Association is charged that it unlawfully conspired with members of the Executive of the Association and others to prevent or lessen, unduly, competition in the sale or supply of prescription drugs and pharmacists' services within Metropolitan Toronto to subscribers of Green Shield Prepaid Services Inc., contrary to paragraph 32(1)(c).

At the conclusion of the preliminary hearing on June 25, 1982, the Association was ordered to stand trial. The trial commenced in Toronto on May 2, 1983, in the Supreme Court of Ontario. During the proceedings, the defence submitted that subsections 10(1) and 10(3) of the Combines Investigation Act were inconsistent with section 8 of the Canadian Charter of Rights and Freedoms, which guarantees that everyone has the right to be secure against unreasonable search and seizure, and were therefore of no force and effect. A further motion by the defence submitted that subsection 45(2) of the Act was invalid by reason of paragraph 11(d) of the Charter and that the documents proved to have been seized from the possession of an officer of the accused Association were, therefore, not admissible into evidence. The Court subsequently dismissed both motions.

The trial continued until May 20, 1983, at which time the Court reserved judgment. At the end of the fiscal year a decision had not been rendered in the matter.

SECTION 34

(4) *Neptune Meters, Limited — Meters and Meter Parts*

This inquiry was initiated following the receipt of a complaint from a meter sales and service firm alleging that Neptune Meters, Limited engaged in a pricing policy that discriminated against them. The evidence obtained in the inquiry was referred to the Attorney General of Canada on March 31, 1981. On December 23, 1981, an Information containing one count under paragraph 34(1)(a) of the Act was laid at Edmonton against Neptune Meters, Limited. In June 1982 the prosecution of this case was transferred to Toronto. The Information was relaid on October 5, 1982, and subsequently the preliminary hearing commenced on May 24, 1983, in Toronto. On June 23, 1983, the accused was ordered to stand trial but subsequently filed a motion to quash the committal. The motion was heard on November 15, 1983, but on February 28, 1984, was dismissed. The accused has indicated its intention to appeal the dismissal of its motion, but no date has been set for hearing the appeal.

SECTION 38

(5) *Durex Marketing Corporation — Citizen Band Antennae*

This inquiry commenced in October 1978 following the receipt of a complaint that Durex Marketing Corporation of Mississauga, Ontario, was engaging in the practice of resale price maintenance with respect to the K-40 antenna.

The evidence in this matter was referred to the Attorney General of Canada on March 30, 1979. In an Information laid at Ottawa on October 23, 1979, Durex Marketing Corporation was charged with eight counts under section 38 of the Act.

At the preliminary hearing at the Peel Provincial Court on July 3, 1980, the company was ordered to stand trial on all counts. On May 31, 1982, a stay of proceedings was entered and on May 31, 1983, the stay was allowed to expire.

(6) *Moncton and District Landlords Association*

This inquiry was initiated by the Director in December 1978 following the receipt of information which indicated that the Moncton and District Landlords Association had agreed on uniform rent increases. In May 1979 the evidence obtained in the inquiry was referred to the Attorney General of Canada. An Information containing one count under paragraph 38(1)(a) of the Act was laid at Moncton on November 9, 1979, against the following individuals and corporations:

Alan D. Schelew
Irving Schelew
Pine Park Realty Ltd.
Bram Enterprises Ltd.
J.S. Management & Consultants Ltd.
Moncton & District Landlords Association Inc.
Alyre J. Boucher
Keith Richardson
Jamb Enterprises Ltd.
Moncton Family Outfitters Ltd.
A.I. Enterprises Ltd.

During the preliminary hearing, which proceeded intermittently between February 1980 and January 1981, the court dismissed motions by the accused for the dismissal of charges on the grounds that the Attorney General lacked constitutional authority in the matter and that an abuse of due process had been committed by the Crown. On October 29, 1980, one of the accused, Alyre Boucher, elected to waive the preliminary hearing. Except for Keith Richardson and Pine Park Realty, who were not committed for trial, all of the remaining accused were, on January 22, 1981, ordered to stand trial.

The trial concluded in late January 1982. On February 15, 1982, all of the accused were acquitted. Notice of appeal was filed by the Crown on March 5, 1982, and argument was heard before the New Brunswick Court of Appeal on September 17, 1982. On January 17, 1984, the appeal was dismissed. The matter was not appealed to the Supreme Court of Canada.

(7) *Rolph-McNally Limited — Maps and Cartographical Material*

This inquiry commenced on January 11, 1979, following the receipt of a complaint alleging that Rolph-McNally Limited had refused to supply a retailer because of the latter's low pricing policy. On November 17, 1980, the evidence in this inquiry was submitted to the Attorney General of Canada. On March 31, 1981, an Information containing one count under paragraph 38(1)(a) and one count under paragraph 38(1)(b) of the Act was laid at Toronto. A preliminary hearing was held on December 9, 1981, and Rolph-McNally Limited was ordered to stand trial on both counts. On October 31, 1983, a stay of proceedings was entered.

(8) *Lois Canada Inc. — Clothing*

This inquiry into the sale and supply of jeans and related products was commenced by the Director in 1979. The evidence obtained in the inquiry pursuant to sections 10 and 17 of the Act was referred to the Attorney General of Canada on March 10, 1981.

On March 1, 1982, an Information containing four counts under section 38 was laid at Montréal against Lois Canada Inc. At the preliminary hearing on June 16, 1982, the accused was ordered to stand trial. The trial commenced on November 22, 1982, and continued to November 24, 1982, at which point there was no more available court time. The trial resumed on January 16, 1984, and final argument is scheduled to be filed by the end of April 1984.

(9) *Autostock Inc. — Automobile Radio Equipment*

This case arose out of an inquiry by the Director into the sale and supply of automobile radio equipment, accessories and related products.

The evidence obtained in the inquiry was referred to the Attorney General of Canada on November 2, 1981. On February 26, 1982, an Information containing two counts under section 38 of the Act was laid at Montréal against Autostock Inc. In November 1982, the Information was relaid and subsequently at the preliminary hearing the accused was ordered to stand trial. The trial commenced on June 8, 1983. On October 6, 1983, the accused was acquitted.

(10) *Audio-Visual Trade Shows and Products*

This inquiry commenced in July 1981 as a result of information received that a stereo equipment distributor was refused participation in the Canadian Audio-Video Trade Show organized by Hunter Nichols Publishing and Sound Spectacular Inc. by reason of the distributor's low pricing policy.

Evidence obtained in the inquiry was referred to the Attorney General of Canada on September 10, 1982. An Information was laid at Toronto on December 29, 1982, against Hunter Nichols Publishing Limited and Sound Spectacular Inc., both of Toronto, alleging contravention of paragraph 38(1)(a) of the Act during the period March 1, 1981, to July 31, 1981. The preliminary hearing commenced in Toronto on October 26, 1983, and the accused was discharged. A preferred indictment is being sought.

(11) *Embroidery Products — Ontario*

This inquiry commenced in November 1982 following the receipt of complaints respecting the operation and franchise agreements of Canadian Bunka Embroidery Co. Ltd. The matter was referred to the Attorney General of Canada in March 1983. An Information was laid on August 19, 1983, and, on February 17, 1984, an Order of Prohibition under subsection 30(2) of the Act was obtained in the Supreme Court of Ontario. This order prohibits the doing

of any act directed toward the commission of an offence contrary to paragraph 38(1)(a), and particularly prohibits the use of a franchise agreement limiting the franchisee to selling only in a specific geographic market and only at prices suggested by the supplier.

SECTION 41

(12) *Scrap Metal — Montréal*

In December 1982 an inquiry was commenced respecting alleged offences under sections 32 and 32.2 and paragraph 34(1)(c) of the Act in the ferrous and nonferrous scrap metal industry. Following the exercise of section 10 authority in Montréal, proceedings were instituted under subsection 41(1) against Preussag Metal Inc. and two employees. The trial commenced on December 2, 1983, and is scheduled to resume on April 26, 1984.

At the end of the fiscal year, the inquiry was continuing.

3. Applications by the Director to the Restrictive Trade Practices Commission under Part IV.1

(1) *BBM Bureau of Measurement — Radio and Television Rating Services*

This inquiry was commenced following the receipt of a complaint alleging that BBM Bureau of Measurement was engaged in the practice of tied selling as defined in subsection 31.4(1) of the Act. The preliminary stage of the inquiry revealed that as a condition of supplying radio data to certain member categories, BBM required or induced these members to acquire its television data.

Evidence was obtained under the authority of section 10 and subsection 9(1) of the Act in June 1977 and December 1978, respectively. On August 21, 1979, the Director filed an Application with the Restrictive Trade Practices Commission pursuant to section 31.4 of the Act, asking for an order prohibiting BBM Bureau of Measurement from continuing to engage in tied selling of its radio and television data to its advertising agency, station representatives and advertiser members.

In the Application, the Director alleged that BBM Bureau of Measurement was engaged in tied selling, and was the sole supplier of radio data and a major supplier of television data in Canada. The Director further alleged that BBM's tied selling policy was likely to impede entry into or expansion of a firm in the Canadian radio and television data market or impede expansion of sales of the television data in the market, with the result that competition had been or was likely to be lessened substantially.

BBM Bureau of Measurement filed its Reply to the Director's Application with the Restrictive Trade Practices Commission on February 28, 1980. In its Reply, BBM denied that any of the allegations in the Director's Application or any combination thereof constituted tied selling as defined in the Act.

Public hearings before the Restrictive Trade Practices Commission commenced on November 25, 1980. Hearings were also held in December 1980, and January, March and April 1981. Argument was heard on June 8, 1981. On October 30, 1981, the Restrictive Trade Practices Commission rendered its decision, in which it found that BBM was engaged in the tied selling of its TV audience measurement service to its radio audience measurement service in Canada as well as the tied selling of its radio audience measurement service to its TV audience measurement service.

On December 19, 1981, the Commission issued an order prohibiting BBM from continuing to engage in its tied selling practices. The order is set out in the 1982 Annual Report.

On December 31, 1981, BBM made application to the Federal Court of Appeal to have the order reviewed and set aside.

On January 18, 1982, BBM sought a stay of the order from the Commission, which was denied on January 28, 1982. Subsequently, BBM brought a motion before the Federal Court — Trial Division to stay the execution of the order on March 17, 1982. On April 1, 1982, the presiding judge of the Trial Division ruled that he did not have jurisdiction to stay the Commission's order.

The application was heard on November 1 to 3, 1983, by the Federal Court of Appeal and on March 6, 1984, was dismissed.

(2) *Motion Pictures*

The early events of this inquiry are covered in greater detail at page 51 of the 1983 Annual Report. On December 22, 1982, the Director applied to the Restrictive Trade Practices Commission for an order under section 31.2 against the following seven major motion picture distributors in Canada: Astral Films Limited; Columbia Picture Industries, Inc.; Paramount Productions Inc.; Universal Films (Canada); Warner Bros. Distributing (Canada) Limited; United Artists Corporation; and Twentieth Century-Fox Film Corporation.

On June 3, 1983, the Director informed the Commission that through negotiations the distributors, excepting Astral Films Limited, had provided undertakings contingent upon the Commission's adjourning the hearings for 12 months. On June 7, 1983, the Commission granted the adjournment, and the undertakings became effective on July 1, 1983. The undertakings provide for a film-by-film, theatre-by-theatre system of distribution whereby the distributors afford eligible exhibitors the opportunity to submit offers for their motion pictures and license the exhibitor which in their business judgment submitted the best offer.

The Director undertook an extensive notification and consultation program with exhibitors and exhibitors' associations, so that they may take advantage of the undertakings and report any noncompliance by the distributors. Throughout the summer and fall of 1983 the distributors' compliance with the undertakings was monitored, and the information obtained formed the basis of the Director's report to the Commission. This report was filed with the Commission on March 15, 1984, and was made part of the public record. The report is available from the Director.

In the report, the Director concluded that he was encouraged by the improvements in the distribution of motion pictures as a result of the undertakings. However, the Director also noted that the increased opportunities for independent exhibitors were, for the most part, due to the increased availability of subsequent runs of motion pictures and only to a limited extent the result of similar improvements regarding first-run product. The report also expressed the Director's intention to continue to monitor the operation of the undertakings, for the purpose of making a further assessment on June 30, 1984. The undertakings given to the Director were contained in a letter, which read as follows:

> You have brought an application under Section31.2 of the Combines Investigation Act.
>
> Without agreeing to any of the allegations contained therein, the distributor is willing to make significant and meaningful changes in its distribution practices, as described below, to ensure that significant competition exists in the distribution and exhibition of motion pictures in Canada.
>
> 1. *Definitions*
>
> (a) *Exhibitor* means any person, firm, or corporation engaged in the business of operating one or more theatres on a regular basis for the purpose of exhibiting motion pictures to the public for a charge.
>
> (b) *Eligible Exhibitor* means any exhibitor who has given the distributor reasonable notice of its intention to submit an offer for an exhibition licence for a motion picture;

provided that nothing herein contained shall prohibit the distributor from refusing to consider any exhibitor for the following business reasons:

(i) failure to honour or perform past contracts or arrangements;

(ii) the offensive type of motion picture generally exhibited at its theatre and where such exhibitor has not declared its intention to change its exhibition policy;

(iii) if the exhibitor has been licensed by the distributor to exhibit a motion picture on a percentage of gross receipts basis and has refused the distributor a reasonable audit of its books and records to verify the accuracy of the receipts submitted to the distributor;

(iv) if the exhibitor is bankrupt or in receivership or if the exhibitor has taken advantage of any Act for the relief of bankrupt or insolvent debtors.

As of the date of this letter, Cineplex Corporation is an eligible exhibitor.

(c) *Geographic Area* means any market in which the distributor seeks to license a motion picture.

(d) *Run* means a continuous course of exhibition of a motion picture in the same theatre complex.

(e) *Theatre* means any establishment licensed by the appropriate provincial government in which motion pictures are exhibited to the public regularly for a charge, including an establishment that contains one or more auditoriums and an establishment that contains one or more drive-in screens.

2. Prior to licensing a run of a motion picture in a geographic area of Canada, the distributor shall afford all eligible exhibitors in that geographic area the opportunity to submit offers to exhibit that motion picture and shall not permit any exhibitor to have a right of first refusal. The distributor shall separately evaluate each offer, either on its individual merit, where no other offer is submitted, or in comparison with any other offers submitted and make a decision whether or not to license which in its business judgment affords it the best opportunity to realize the fullest economic benefit from the exhibition of that motion picture. In making its licensing decision the distributor shall not be precluded from negotiating with any exhibitor provided that in so doing it shall not discriminate in the licensing process against any other exhibitor on any grounds except in accordance with the provisions of this letter.

3. The distributor, in its decision to license a motion picture, shall disregard that any of the competing eligible exhibitors is able to exhibit the motion picture in one or more other theatres.

4. Prior to licensing a motion picture in a geographic area, the distributor shall advise all eligible exhibitors of the anticipated number of theatres to be licensed for simultaneous exhibition of that motion picture in that geographic area.

5. The distributor shall determine the appropriate pattern of release for each of its motion pictures (including the geographic areas and the number and length of runs, exclusive or otherwise), provided that the distributor will not be a party to any agreement or arrangement with any exhibitor to determine such pattern of release.

Subject to the foregoing right to determine, the distributor shall not agree with any exhibitor that during a run of a particular motion picture, it shall not license any other run of that motion picture unless such other run is in "substantial competition" with the run of such exhibitor.

"Substantial competition" shall mean that the number of persons who are likely to pay to attend the theatre at which the licensed run of the motion picture is to be exhibited will be significantly less if such other theatre exhibited the motion picture simultaneously.

6. The distributor recognizes that one of your main concerns is the ability of an eligible exhibitor to be able to license a motion picture for exhibition at his theatre immediately on the completion of its run in a theatre in the same geographic area. The distributor assures you that it will be its policy to accommodate this concern where the motion picture has not been generally withdrawn from circulation and that ordinarily there should be no reason why such concern should not be accommodated.

In the light of the foregoing, the distributor agrees that upon the completion of a run in a geographic area or upon becoming aware of the date when such run will be completed, whichever first happens, the distributor shall afford all eligible exhibitors in substantial competition with the exhibitor for that previous run the opportunity to submit offers to exhibit that motion picture immediately after the completion of that prior run. The distributor shall separately evaluate each offer either on its individual merit, where no other offer is submitted, or in comparison with any other offers submitted and make a decision whether or not to license which in its business judgment affords it the best opportunity to realize the fullest economic benefit from the exhibition of that motion picture. In making its licensing decision the distributor shall not be precluded from negotiating with any exhibitor, provided that in so doing the distributor shall not discriminate in the licensing process against any other exhibitor on any grounds except in accordance with the provisions of this letter.

7. The distributor shall disclose to the Director of Investigation and Research ("Director") the terms of each run licensed and the reasons for any licensing decision referred to in paragraphs 2, 3, 4, 5, or 6 herein forthwith upon request. The Director may on three clear business days notice examine the records of the distributor relevant to any licensing decision referred to in paragraphs 2, 3, 4, 5, or 6 herein.

You have advised the distributor that one of the matters in which you will be particularly interested is the distributor's determination in particular cases of the theatres which the distributor deems to be in substantial competition with each other for the purpose of licensing any particular motion picture.

Any information obtained by you pursuant to this paragraph shall be kept by you as confidential in the same manner as if it had been obtained in the course of an inquiry under the Combines Investigation Act, provided that nothing herein contained shall prevent you from communicating your conclusions and the reasons therefor based on such examination to any exhibitor who has complained to you. For greater certainty it is also agreed that any such information may be disclosed in any proceedings brought by you before a court of record.

8. For a six (6) months period from the date of receipt the distributor will maintain written records of the details of the successful offers received by it and will also retain any other documents generated in the normal course of business pertaining to the other offers received.

9. Nothing herein contained shall constitute any admission by the distributor of any civil or criminal liability and this agreement is being executed without prejudice to the distributor's right to assert claims or defences arising out of the distributor's activities in Canada.

10. The Director will agree to an adjournment of the hearing before the Restrictive Trade Practices Commission of twelve (12) months from the effective date of this letter and the distributor hereby consents to the Director bringing the application back on for hearing before the Restrictive Trade Practices Commission against all the respondents on four (4) weeks' notice to the distributor. You have indicated your present intention that if there has been compliance by the distributor with the terms hereof and by the other respondents with the terms of any similar letters being executed by them contemporaneously herewith, then at the end of twelve (12) months you will abandon such proceedings.

11. The effective date of the arrangements set out in this letter is July 1st, 1983.

4. Discontinued Inquiries Reported to the Minister in Accordance with Subsection 14(2) of the Act

SECTION 32

(1) *Toronto Maple Leafs and the* Globe and Mail

In January 1984, the Director received an application under section 7 of the Act alleging that Harold Ballard, the Toronto Maple Leafs Hockey Club and others had agreed to bar reporters for the *Globe and Mail* from the press box at Maple Leaf Gardens during regularly scheduled National Hockey League games. Reports of the application appeared in the press, apparently based on information provided by persons outside the Bureau.

After a review of the information available, the Director decided to discontinue the inquiry. While it could be argued that the actions taken caused discrimination against the *Globe and Mail*, the information did not establish that the arrangement, if there was one, was one to lessen competition unduly. In March 1984, the reasons for the discontinuance were reported to the Minister and to the applicants as required by section 14 of the Act. At about the same time, it was learned that an interim resolution of the dispute between the *Globe and Mail* and the Toronto Maple Leafs had been achieved.

SECTION 32.2

(2) *Snow Removal Services — Maritimes*

This inquiry commenced in October 1979 following the receipt of information regarding irregularities in the submission of tenders to a city in the Maritimes in 1979 by private contractors for the provision of snow and ice removal services and equipment. The tendered rates were substantially in excess of the historical rates bid, and it was alleged that the six contractors had agreed or arranged among themselves to submit a joint bid without notifying the city at or before the time the joint tender was made.

During the course of the inquiry, documentary evidence was obtained from the offices of the six contractors pursuant to section 10 of the Act and tendering records of the city for the years 1978-1980 were examined. The documents secured indicated that a joint bid had been submitted. However, the evidence available did not demonstrate conclusively that the contractors failed in their obligation to notify the city of the joint bid in advance of the arrangement at or before the time the joint tender was made as required by section 32.2 of the Act. Furthermore, the wording of the "Instructions to Tender," which were prepared by the city, did provide under certain conditions for submissions of tenders by joint tenderers and consortia. Accordingly, the inquiry was discontinued and reported to the Minister on July 4, 1983.

(3) *Salt-hauling Tenders — Maritimes*

This inquiry commenced in October 1979 following the receipt of a complaint which alleged that certain members of a county truck association had agreed to a scheme of tendering for salt-hauling requirements for a municipality for the year 1979-80. Specifically, it was alleged that one operator would submit the lowest tender and that upon the award of the contract to the low bidder all group members would participate in the transportation of the salt.

During the course of the inquiry, documentary evidence was obtained from the premises of the participants of the alleged bid-rigging scheme pursuant to section 10 of the Act and tendering records of the municipality for the years 1979-80 and prior were examined.

The documents obtained did not confirm the allegations and upon further investigation it was concluded that, in the absence of any further conclusive corroborative evidence, it would not be possible to proceed with a charge of bid-rigging in this matter. Accordingly, the inquiry was discontinued and reported to the Minister on February 7, 1984.

(4) *Waste Disposal — Toronto*

This inquiry commenced in July 1981 following the receipt of a formal application under section 7 of the Act from two locals of the Canadian Union of Public Employees concerning the operation and future development of solid waste landfill sites in the Toronto region. During 1983, following extensive study and negotiations, control of the subject landfill site passed to municipal authorities from a solid waste haulage firm. This development markedly altered the structure of the industry and effectively dealt with the initial concerns of the complainants. Accordingly, this inquiry was discontinued and reported to the Minister on February 8, 1984.

SECTION 34

(5) *Books — Western Canada*

This inquiry was initiated in December 1981 following the receipt of a formal application under section 7 of the Act by six Canadian residents, who alleged that a distributor and seller of books was engaging in a policy of predatory pricing in respect of sales of textbooks in a particular European language to institutions in western Canada.

Documentary evidence was gathered pursuant to section 10 of the Act from the distributor complained against. The evidence obtained did not support the allegations made by the applicants, and the Director concluded that the matter did not warrant further inquiry. Accordingly, the inquiry was discontinued and reported to the Minister on July 4, 1983.

SECTION 38

(6) *Trucking Rates — Maritimes*

This inquiry commenced in August 1979 following the receipt of a complaint from three members of a county trucking association alleging that each had received a letter from the association which stated that earlier in the year the membership of the association had passed motions requiring association members to abide by the trucking rates approved by the association for all government-funded jobs.

The complainants stated that when they continued to haul at lower rates than those agreed upon by the association, threats and harassment ensued.

During the course of the inquiry documentary evidence was obtained from the premises of executive members of the association. The documents obtained showed that the said motions were passed; however, there was no evidence indicating that the motions were in fact implemented. It was further discovered that a number of other association members had, subsequent to the passing of the motions, quoted rates below those agreed upon at association meetings, indicating that the association was unable to impose the approved rates upon any of its members. Furthermore, analysis of data regarding available trucks in the area indicated that association members accounted for a much smaller proportion of all available trucks in the area than was initially believed. In view of the facts, the inquiry was discontinued and reported to the Minister on February 7, 1984.

5. Other Matters

(1) *Notarial Services — Québec*

The existence of this inquiry into the supply of notarial services in the Province of Québec was brought to public attention following an application by the Chambre des Notaires du Québec under section 18 of the Federal Court Act for the cancellation of a certificate issued by the Restrictive Trade Practices Commission authorizing the exercise of the Director's powers under section 10 of the Act. This application was heard in the Federal Court — Trial Division on April 5, 1982, at Montréal and dismissed on April 23, 1982.

The inquiry was commenced in November 1981, following the receipt of information to the effect that certain notaries had concluded an agreement for a schedule of fees for transactions involving real estate. The information obtained indicated that the Chambre des Notaires du Québec was involved in the preparation and distribution on a province-wide basis of a fee schedule for real estate transactions. The Director therefore used his formal powers under section 10 of the Act to search the premises in January 1982. In May 1983, witnesses were examined under oath before a member of the Restrictive Trade Practices Commission pursuant to section 17 of the Act.

At the end of the fiscal year, the inquiry was still in progress.

(2) *Newspapers — Edmonton, Alberta*

This matter was described in detail at page 55 of the 1983 Annual Report. Following the exercise of section 10 authority at the *Edmonton Journal* in April 1982 concerning an inquiry under section 33 and paragraph 34(1)(c) of the Act relating to the production, distribution and supply of newspapers in Edmonton, application was made for an injunction to prohibit further searching.

The matter was argued before the Alberta Court of Queen's Bench in April 1982, and subsequently before the Alberta Court of Appeal. In January 1983, the latter court ruled section 10 of the Combines Investigation Act to be contrary to the provisions of section 8 of the Charter. Leave to appeal to the Supreme Court of Canada was granted, and arguments were made on November 22 and 23, 1983. At the end of the fiscal year, no decision had been rendered.

(3) *Thomson Newspapers*

During an ongoing inquiry the Director made application to a member of the Restrictive Trade Practices Commission, under section 10(3) of the Act, to authorize his representatives to conduct an examination of the records located on various premises of Thomson Newspapers Limited. In the course of executing this authority, the company obtained an order from the Federal Court — Trial Division, prohibiting the Director and his representatives from continuing their searches, on the grounds that section 10 of the Act was contrary to section 8 of the Constitution Act.

The matter is now before the Appeal Division of the Federal Court, which has granted the Crown leave to appeal the decision.

(4) *Inquiry in Progress — National Hockey League*

In May 1983, the Board of Governors of the National Hockey League (NHL) rejected an application for the sale and transfer of the St. Louis Blues franchise to Saskatoon, Saskatchewan. After a preliminary investigation, the Director concluded that the circumstances provided grounds for an inquiry under section 33 of the Act and, in June 1983, applied to the Restrictive Trade Practices Commission for orders pursuant to section 17 of the Act requiring the attendance of certain officers and Governors of the NHL to give evidence.

The existence of the inquiry became public as a result of challenges to the orders by the NHL in the courts. On August 9, 1983, the Federal Court of Canada dismissed a motion by the NHL to quash the orders, after the NHL had argued that section 17 of the Act was contrary to the Charter of Rights and Freedoms. An appeal of that decision was dismissed by the Federal Court of Appeal in November 1983 and, in March 1984, the Supreme Court of Canda denied an application for leave to appeal.

The inquiry was continuing at the end of the fiscal year.

(5) *Buying Groups*

In June 1982 the Director received an application under section 7 of the Act concerning the establishment of a buying group by two major food retailers. The concerns of the appli-

cants were extensively reported in the press. At the end of the fiscal year, this inquiry was continuing.

(6) *Professional Engineers Act and Architects Act — Province of Ontario*

During the year, the Ontario Legislature considered new legislation governing the engineering and architectural professions. Among other things, the Professional Engineers Act, 1983, included a proposal to empower the Council of the Association of Professional Engineers of Ontario to make regulations, subject to approval by the Lieutenant Governor in Council, providing for the setting of schedules of suggested fees. On February 1, 1984, a submission was made on behalf of the Director before the Standing Committee on the Administration of Justice of the Ontario Legislature on the proposed legislation.

The Bills were passed by the Legislature and received Royal Assent on May 1, 1984.

(7) *Merger Register*

This register has been maintained by the Director since 1960. It attempts to record all reported mergers in industries subject to the Combines Investigation Act.

Accordingly, until the 1976 amendments, firms in most of the service sectors of the economy were largely excluded. Information available under the Corporation and Labour Unions Returns Act (Calura) indicates that a large number of very small acquisitions are not reported in the press. Calura information itself is not used in the preparation of the register because many companies report late, many acquisitions of extremely small companies are reported without any indication as to size, many acquisitions are of nonoperating companies, and it is often impossible to tell whether there has been a real change in control.

The merger register depends upon comprehensive coverage of the major financial news media, including daily and financial newspapers, trade journals, business magazines and other publications of Canada, the United States and Britain. To the extent that the intensity of press reports of merger activity does not vary significantly from year to year, to the extent that it is accurately reported, and to the extent that the canvass of press reports by the Bureau is consistent from year to year, the number of acquisitions recorded in the merger register provides an indication of merger trends.

Since the Foreign Investment Review Act came into force in April 1974, the information respecting "foreign" acquisitions in the merger register now includes acquisitions which have been allowed under the Foreign Investment Review Act. Information respecting applications for acquisition of Canadian business enterprises by foreign persons ("non-eligible persons" in terms of FIRA) is brought to the attention of the Director for the purpose of obtaining advice with respect to the competition policy implications of proposed acquisitions. However, the information provided to the Director by the Foreign Investment Review Agency would not of itself be used to initiate an inquiry or in any subsequent proceedings under the Combines Investigation Act.

Although the register does reflect a fairly comprehensive coverage of published sources of information, attempts to verify its accuracy have shown that there is need of more adequate continuing sources of information about mergers. At this time, therefore, the merger register should not be regarded as more than an initial review of public information.

The following table shows the total number of acquisitions recorded yearly since 1960.

Year	Foreign*	Domestic**	Total
1960	93	110	203
1961	86	152	238
1962	79	106	185
1963	41	88	129
1964	80	124	204
1965	78	157	235
1966	80	123	203
1967	85	143	228
1971	143	245	388
1972	127	302	429
1973	100	252	352
1974	78	218	296
1975	109	155	264
1976	124	189	313
1977	192	203	395
1978	271	178	449
1979	307	204	511
1980	234	180	414
1981	200	291	491
1982	371	205	576
1983***	395	234	629

* Acquisitions involving a foreign-owned or foreign- controlled acquiring company (the nationality of the controlling interest in the acquired company prior to the merger could have been foreign or Canadian)

** Acquisitions involving an acquiring company not known to be foreign-owned or foreign-controlled (the nationality of the controlling interest in the acquired company prior to the merger could have been foreign or Canadian)

*** Preliminary

CHAPTER VI

REGULATED SECTOR BRANCH

1. Activities

The Regulated Sector Branch, at the present time, is primarily concerned with the behaviour and performance of regulated industries in the telecommunications, broadcasting and transport areas. It also has prepared studies on the effects of tariffs and quotas on competition in Canada.

While the Regulated Sector Branch is relatively new, the Director of Investigation and Research has had the authority to intervene before federal regulatory boards since the 1976 amendments to the Combines Investigation Act. The Director has, from time to time, also intervened before provincial regulatory boards with the permission of such boards or at their invitation. In addition to interventions under section 27.1 of the Act, the Branch enforces sections of the Act which may be applicable to the unregulated activities of regulated industries.

Section 27.1 reads as follows:

> 27.1(1) The Director, at the request of any federal board, commission or other tribunal or upon his own initiative, may, and upon direction from the Minister shall, make representations to and call evidence before any such board, commission or other tribunal in respect of the maintenance of competition, whenever such representations or evidence are or is relevant to a matter before the board, commission or other tribunal, and to the factors that the board, commission or other tribunal is entitled to take into consideration in determining such matter.
>
> (2) For the purposes of this section, "federal board, commission or other tribunal" means any board, commission, tribunal or person who is expressly charged by or pursuant to an enactment of Parliament with the responsibility of making decisions or recommendations related directly or indirectly to the production, supply, acquisition or distribution of a product and includes an ad hoc commission of inquiry charged with any such responsibility but does not include a court.

Since 1976, the Director of Investigation and Research has made representations before a number of regulatory bodies, among them, the Canadian Radio-television and Telecommunications Commission, the Canadian Transport Commission, the Board of Commissioners of Public Utilities for the Province of Nova Scotia, the Board of Commissioners of Public Utilities of the Province of New Brunswick, the Public Utilities Board of Alberta and the Ontario Securities Commission.

These interventions have dealt with a broad range of issues including systems and terminal interconnection in the telecommunications industry, entry in the transport industries, the effect on competition of acquisitions and joint ventures in telecommunications and transport and the introduction of more competition in both broadcasting and the securities industry.

The Director liaises with other groups during the preparation of an intervention to ensure that his representations are complementary and not redundant.

2. Proceedings Following Direct Reference to the Attorney General of Canada Pursuant to Subsection 15(1) of the Act

SECTION 32

(1) *"For-hire" Trucking — Western Canada*

As noted in earlier Annual Reports, the evidence gathered in this inquiry was referred to the Attorney General of Canada, and, on November 5, 1979, an Information was laid under section 32 of the Act against 20 trucking companies and 11 individuals for allegedly conspiring to lessen competition in the western trucking market for less-than-truckload services.

Last year's Annual Report and Chapter II of the Annual Report for 1982 described a court challenge of the competence of the Attorney General of Canada to initiate a prosecution and exercise all the powers and functions conferred by the Criminal Code or the attorney general of a province. This matter was resolved on October 13, 1983, when the Supreme Court of Canada ruled in favour of the Attorney General of Canada.

The case was proceeding to preliminary hearing when, on March 27, 1984, in Alberta Provincial Court, counsel for the defence raised objections to the case proceeding on grounds of loss of jurisdiction by the Provincial Court and an undue delay in contravention of the Canadian Charter of Rights and Freedoms. The judge has reserved his decision in these matters until May 15, 1984.

(2) *Transportation of Used Household Goods*

This case arose out of an inquiry by the Director into an alleged conspiracy to prevent or lessen competition in the transportation of used household goods.

The evidence obtained in the inquiry was referred to the Attorney General of Canada on August 3, 1978. An Information containing one count under paragraph 32(1)(c) of the Act was laid at Toronto on February 20, 1980, against the following companies and industry associations:

Allied Van Lines Limited
United Van Lines (Canada) Ltd. (formerly Missouri United Van Lines Limited)
North American Van Lines Canada Ltd.
Aero Mayflower Transit Co. Ltd.
Atlas Van Lines (Canada) Ltd.
Canadian Warehousing Association
Canadian Household Goods Carriers' Tariff Bureau Association

In addition, several individuals and one other industry association were named as unindicted coconspirators.

The preliminary hearing in this matter commenced on December 7, 1981, and concluded on January 29, 1982, at which time the accused were ordered to stand trial.

The setting of the trial date was delayed as a result of the uncertainty caused by the constitutional issue raised in the *Western Trucking* case referred to in item (1).

On December 14, 1983, the five van lines and their tariff bureau pleaded guilty to conspiring to lessen competition unduly in the interprovincial transportation of used household goods within Canada over a 17-year period starting in 1963. The companies pleading guilty controlled more than 85 per cent of the interprovincial moving industry after 1973. The conspiracy lessened competition unduly with respect to prices charged and quality and quantity of services provided to the public. The five companies were fined a total of $250,000 and were issued with a Prohibition Order. The order disbands the tariff bureau and prohibits the five van lines and the moving companies affiliated with them from engaging in various forms of anticompetitive behaviour in the future. Further details of the order appear in Chapter II.

3. Director's Representations to Regulatory Boards

(1) *Bell Canada and British Columbia Telephone Company Applications for Approval of Increases in Rates for Services Provided by the Members of the Trans-Canada Telephone System (TCTS)*

This matter was referred to in detail at page 60 of the 1983 Annual Report.

On July 7, 1981, the Canadian Radio-television and Telecommunications Commission (CRTC) issued Telecom Decision 81-13. The Decision ordered Bell Canada and the British

Columbia Telephone Company (B.C. Tel) to renegotiate, with other members of the Trans-Canada Telephone System, now known as Telecom Canada, the terms of their participation in the revenue settlement procedures to which all Telecom Canada members adhered. The CRTC's order was based on its finding that the terms of the existing settlement procedures, by which members divide long-distance telephone revenues generated by calls between their operating territories, were inequitable, to the disadvantage of Bell Canada and B.C. Tel.

As indicated in the 1983 Annual Report, Bell Canada and B.C. Tel advised the CRTC that their subsequent attempts to enter into renegotiations on this subject failed when several members of Telecom Canada refused to discuss the issue. Telecom Canada's rules and procedures require that all activities of the organization be undertaken only with unanimous consent.

As of March 31, 1984, this matter remained unresolved.

(2) *Bell Canada, Connection of Customer-provided Terminal Devices*

On November 13, 1979, Bell Canada applied to the Canadian Radio-television and Telecommunications Commission (CRTC) for an order approving an amendment to rule 9 of the General Regulations of Bell Canada. This rule is one of the conditions that govern the connection of telecommunication equipment to the Bell Canada network. The details of this application, as well as Bell's proposals for interim requirements governing the attachment of customer-owned equipment, and the interim and final decisions appear in the 1982 and 1983 Annual Reports at pages 64 and 61, respectively.

In its Telecom Decision 82-14 of November 23, 1982, the CRTC ruled that it would not be appropriate to deregulate the terminal equipment business of carriers conducted on an in-house basis. Accordingly, the CRTC imposed a number of requirements on the carriers pertaining to the pricing of new and in-place terminal equipment. On December 20, 1982, CNCP Telecommunications filed Notice of Application for Leave to Appeal to the Federal Court of Appeal on the basis that the CRTC erred in holding that it had authority to regulate the prices at which CNCP sells such equipment. As an intervenor in the terminal attachment proceedings leading to Telecom Decision 82-14, the Director is a respondent in this court action. On March 31, 1984, the Court was still in the process of determining which documents associated with the CRTC's public hearings on the matter should form part of the court record for purposes of reviewing the appeal.

On February 10, 1983, in a related matter, CNCP requested that the CRTC rescind those parts of Telecom Decision 82-14 pertaining to the regulation of CNCP's terminal equipment prices. The CRTC is expected to rule on this application after the Court of Appeal reaches a decision concerning the CRTC's authority to regulate such prices.

On February 14, 1983, Bell Canada applied to the CRTC requesting that it rescind or vary the requirement in Telecom Decision 82-14 that carriers levy a charge on customers for each telephone directory supplied to them beyond one per access line. British Columbia Telephone Company later made a similar application. The companies argued that the CRTC's requirement, by reducing the circulation of directories, would unnecessarily reduce the advertising revenues available to them. In its Telecom Decision 84-8 of February 13, 1984, the CRTC accepted the carriers' argument and rescinded the decision in question.

In Telecom Decision 84-11, issued March 30, 1984, the CRTC required Bell and B.C. Tel to submit revised tariffs separating their rates for telephone station equipment and access lines. This requirement applies to B.C. Tel as of July 1, 1984, and to Bell as of September 1, 1984, at which times single-line telephone subscribers will be permitted to own their primary telephone in addition to their extension telephones, as is presently permitted.

(3) *Maritime Telegraph and Telephone Company Limited Application for Tariff Approval of Voice Page Service*

On November 23, 1978, Maritime Telegraph and Telephone Company Limited (Maritime Tel) made an application to the Board of Commissioners of Public Utilities for the Prov-

ince of Nova Scotia to have tariffs approved for a voice paging service. The background to the matter is described at page 63 of the 1983 Annual Report.

The Director, in a letter dated January 15, 1983, requested the Board to initiate proceedings in the matter of the establishment of outpulsing rates for direct dial paging.

On April 14, 1983, Maritime Tel made an application to the Board for permission to begin offering direct dial paging service. In doing so, it also provided the Board with proposed tariffs for the service and for outpulsing numbers required by competitors who wished to gain access to Martime Tel's local switched telephone network for the purpose of competing in the paging market.

A public hearing on the matter was held between June 24, 1983, and July 5, 1983. The Director intervened and presented Charles M. Dalfen as an expert witness. Mr. Dalfen reviewed the CRTC's findings in the *Colin's* decision, by which the CRTC first allowed the interconnection of competing paging companies to the local switched network of the federally regulated common carriers. Mr. Dalfen also discussed appropriate costing methodologies to be used in setting rates for outpulsing service. During the proceedings, Maritime Tel made a motion questioning the Director's standing before the Board and requesting the Board to ask the Nova Scotia Court of Appeal to rule on the Board's power to grant the Director standing. The Board refused this request.

On November 4, 1983, the Board approved rates approximately 40 per cent lower than those proposed by Maritime Tel. However, the Board indicated that this was merely an interim decision pending resolution of certain concerns the Board had over Maritime Tel's costing methodologies and over the cost data the company had submitted to the Board during the course of the public hearing on the matter. The Board intends to resolve its concerns on these issues during its proposed hearing on terminal attachment (see item 33).

In addition, the Board required that Maritime Tel delay the implementation of its proposed paging service to ensure that the company did not enjoy a head start which would have seriously disadvantaged its independent paging competitors. In keeping with the Director's argument on the issue, the Board also required Maritime Tel to unbundle its rates for network access and for usage, in order to guard against the possibility that the company would cross-subsidize its competitive services with revenues from its regulated monopoly services.

(4) *New Brunswick Telephone Company Limited Application for Network Extension Telephone Service*

On December 22, 1978, the New Brunswick Telephone Company, Limited (N.B. Tel) made an application to the Board of Commissioners of Public Utilities of the Province of New Brunswick for approval of proposed rates and charges for a new service to be offered by the applicant known as Network Extension Telephone Service, i.e., radio paging service. The details of the hearings in this matter are set out at pages 64 and 65 of the 1983 Annual Report.

As reported at that time, Capital Communications and Multi-Services Ltd. of Fredericton, New Brunswick, submitted a complaint to the Board of Commissioners of Public Utilities of the Province of New Brunswick. The complaint requested that the Board set tariffs for telephone answering radio paging and mobile radio services interconnected to the network of N.B. Tel.

This matter remains unresolved. However, the Board has convened a general issues hearing to consider the potential impact of systems and terminal interconnection on telephone service in the province. Capital Communications and Multi-Services has once again raised the issue of outpulsing service and rates in the context of this hearing. The Director is also an intervenor in the general issues proceeding, as reported in item (13).

(5) *Domestic Advance Booking Charters, 1981*

The Director has continued to monitor a number of follow-up matters originating from the Air Transport Committee Decision #5369 on Domestic Advance Booking Charters and the

Order in Council varying this decision. The Air Transport Committee Decision permitted Air Canada and C.P. Air to each offer a maximum of 25 inter-regional return flight Domestic Advance Booking Charters between points on their respective licences. Regional Carriers were permitted to operate Domestic Advance Booking Charters within their respective operating territories. The Order in Council removed the ceiling of 25 inter-regional Domestic Advance Booking Charter return flights and permitted Regional Carriers to fly Domestic Advance Booking Charters anywhere in Canada for a period of three years, after which time the matter is to be reviewed.

In one follow-up matter, the Director filed a submission following the Air Transport Committee's invitation to comment on a discussion paper dealing with proposed simplified rules (Class 10) to replace existing regulations on domestic charter services. To promote administrative convenience and to enhance competition, several existing regulations were to be eliminated. In addition, proposed new entrants in the domestic charter market would be required to prove public convenience and necessity. However, the current Domestic Advance Booking Charter requirements for all passengers to purchase round-trip transportation and to observe a minimum stay at the destination until after the first Sunday from departure would be retained. The Director, in his submission, stressed competitive parity and noted that further innovations in the low-priced air fare market are most likely to be achieved through the operation of a market system in which entry is free and governed to the maximum possible extent by competitive forces.

The Air Transport Committee has not rendered a report or decision on the proposed simplified rules. However, in a reference paper by Committee Staff, *Regulation of ABC (Domestic) and Domestic ITC Operations*, published in January 1984 as part of the background to the Committee's Air Fare Policy Review (see item (34)), the possibility of adopting these rules was again discussed. This matter may be resolved when the Committee releases its report to the Minister on air fare policy, which is expected in May 1984.

(6) *Bell Canada, Northern Telecom Price Comparison*

The price comparison tests are designed to ensure that Northern Telecom is fulfilling its part of the supply contract with Bell Canada whereby Northern undertakes to sell to Bell at prices no higher than it sells to other Canadian customers. Bell Canada has been regularly filing price comparisons for many years with the CRTC and previously with the Canadian Transport Commission.

As a result of Telecom Decision 80-14, dated August 12, 1980, the CRTC issued Telecom Public Notice 81-18 on March 6, 1981. In that Notice, the CRTC indicated that it intended to review the price comparison principles enunciated by itself in Telecom Decision 78-7. The CRTC invited submissions from interested parties to be filed with the CRTC by September 1, 1981.

The Director filed a detailed and comprehensive submission referred to in detail at pages 66 and 67 of the 1983 Annual Report.

The CRTC has yet to render a decision on this matter.

(7) *Alberta Government Telephones — Terminal Attachment*

Alberta Government Telephones (AGT) filed an application with the Public Utilities Board of Alberta (the Board) on February 16, 1981, which would have the effect of permitting customers to own and maintain terminal telephone equipment such as primary and extension telephones, PBXs, Key systems and inside wiring. This application was subsequently revised on July 24, 1981, during the course of the hearing, but the revision did not materially affect the contents of the application. This matter was discussed in detail at pages 68 to 70 of the 1983 Annual Report. As reported at that time, AGT sought approval from the Board to delete terminal (voice) services from the company's basic service category and to place such services in its non-basic service category. Basic services are regulated by the Board while non-basic services are unregulated.

In a decision issued on September 27, 1983, the Board approved the deletion of the terminal equipment services in question from AGT's basic service category, with the observation

that the prevailing potential for the entry of competitors in the terminal attachment market justified deregulation.

However, contrary to the position taken by the Director in the course of the public hearing on the matter, the Board concluded that the costing and accounting methodologies employed by AGT were adequate to permit the Board to ensure that the company would not cross-subsidize its competitive business activities in the terminal equipment market with revenues from its regulated monopoly activities. Accordingly, the Board chose not to adopt the Director's recommendation that AGT be required to offer terminal equipment services and products through a separate corporate entity that does not share facilities with the parent corporation.

The Board also failed to accept the Director's recommendations that it order AGT to permit the interpositioning of terminal equipment, following the establishment of adequate equipment standards, and to publish information concerning AGT's customer contracts. The Board was of the opinion that AGT's interpositioning policy did not impair competition. In addition, the Board held that the procedures established by AGT to preclude the flow of strategically valuable information from its monopoly division to its competitive division, to the disadvantage of its competitors, were satisfactory and did not justify the requirement that AGT publish information concerning its existing customer contracts, as suggested by the Director.

(8) *Draft General Rules of the Canadian Transport Commission*

On June 1, 1981, the Canadian Transport Commission (CTC) indicated its intention to hold a public meeting in July 1981 to hear interested parties wishing to make representations concerning a proposed revision of the General Rules of the CTC.

The Director reviewed the proposal and filed his comments with the Secretary of the CTC, suggesting that Rule 105 of the Draft General Rules of the CTC be amended so as to permit the Director to comment to the CTC on proposed acquisitions such as those contemplated by section 27 of the National Transportation Act. An amendment of this kind would provide a practical means for the Director to effectively exercise his mandate to promote competition with respect to such acquisitions.

New General Rules were published by the CTC on May 16, 1983, under which interventions may be made by any person who is interested in an application or an objection. Under these conditions, the Director is in a position to comment on matters before the CTC, including proposed acquisitions subject to section 27 of the National Transportation Act.

(9) *CRTC Telecom Cost Inquiry — Phase III — Costing of Existing Services*

On December 15, 1981, the CRTC issued Telecom Public Notice 1981-41 announcing its intention to hold a public hearing as part of the third phase of the Telecommunications Cost Inquiry (Cost Inquiry).

The Cost Inquiry was initiated by the Canadian Transport Commission in January 1972 and continued by the CRTC in April 1976, when it assumed jurisdiction over federally regulated telecommunications carriers. The proceedings are described in detail at pages 72 and 73 of the 1983 Annual Report.

In that report, it was indicated that the Director had filed written formal and reply arguments on this subject with the CRTC and was awaiting the decision of the Inquiry Officer who chaired the public hearings on the matter.

As of March 31, 1984, the decision of the Inquiry Officer had not been announced.

(10) *Newfoundland Telephone Company Limited — Mobile Radio and Paging Services*

On April 27, 1982, Newfoundland Telephone Company Limited (Nfld Tel) filed an application with the Board of Commissioners of Public Utilities for approval of a new service to be called Dial Access to Radio Paging Service. The hearing convened on June 3, 1982, at

which time Nfld Tel objected to the intervention of the Director on the grounds that the Director did not have the statutory power to appear and that his appearance was not relevant to the hearing. The Board subsequently dismissed the objection and in a written order dated June 11, 1982, permitted the Director to appear and be heard on the application.

Further details in this matter and additional background information are set out at pages 74 and 75 of the 1983 Annual Report. As reported at that time, Nfld Tel had petitioned the Supreme Court of Newfoundland, Court of Appeal, for leave to appeal the decision of the Board to grant the Director standing to appear before it in relation to this matter. The appeal was heard on December 5, 1983. Nfld Tel argued that the Board's decision to grant the Director standing was an error in law given the absence of a specific authority granted to the Director by the Combines Investigation Act to appear before provincial regulatory boards. Subsection 27.1(1) of the Act specifically authorizes the Director to appear before federal regulatory boards.

As of March 31, 1984, the Court had not delivered its judgment in this matter.

(11) *Bell Canada Corporate Reorganization*

On June 23, 1982, Bell Canada announced a plan to reorganize the Bell Canada group of companies. An essential element of the reorganization would be a court-authorized "arrangement" as provided for by the Canada Business Corporations Act, whereby all of Bell Canada's outstanding share capital would be transformed into share capital of Bell Canada Enterprises Inc. (BCE), a former subsidiary of Bell Canada. Through an exchange of shares, all of Bell Canada's equity investments, except those in Tele-Direct (Publications) Inc., Bell-Northern Research, and Telesat Canada, would then be transferred to BCE. These transferred investments consist primarily of Bell Canada's controlling interest in Northern Telecom, a number of provincial telephone companies, Bell Canada International Management Research and Consulting Ltd. (BCI), Bell Communications Systems Inc. (BCS, a supplier of customer premises telecommunications equipment), and a number of printing and publishing companies. Thus, BCE would become the new holding company for the Bell group, and Bell Canada would become a wholly-owned subsidiary of BCE. BCE would also become the focus for strategic planning within the Bell group.

Further details in this matter are referred to at pages 78 to 80 of the 1983 Annual Report. At that time, it was reported that the decision of the CRTC in this matter was pending.

The CRTC published its report on April 18, 1983. It identified specific areas in which the proposed reorganization of the Bell group of companies could affect Bell's telephone subscribers and recommended legislative action to remedy these potential problems. The CRTC concluded that if the recommended legislative amendments were enacted, there would not be any negative impact on subscribers arising from the reorganization. The CRTC also expressed the view that there were potential benefits related to the reorganization.

The legislative changes recommended by the CRTC would:

(a) clarify the CRTC's power to compel the production of documents and information from Bell Canada Enterprises and other Bell affiliates relevant to the carrying out of the CRTC's statutory mandate;

(b) create a new power allowing the CRTC to direct that:

  (i) any competitive telecommunications activity being carried out within Bell Canada be conducted through a separate affiliate, and

  (ii) any telecommunications activity being carried on by an affiliate of Bell Canada, which activity was not subject to a degree of competition that, in the CRTC's view, was sufficient to ensure that services were being offered at just and reasonable rates and on terms that were not unjustly discriminatory or unduly preferential, be conducted within Bell Canada,

provided that any such direction would only be made in circumstances where the CRTC was satisfied that it constituted a practical and effective means of ensuring compliance with applicable telecommunications regulatory legislation, including the Railway Act and the Special Act;

(c) empower the CRTC to order that a minority shareholding interest in Bell Canada be created if it constituted a necessary, practical and effective means of ensuring compliance with the applicable regulatory legislation;

(d) reconfirm Bell Canada's obligations to furnish telephone service, to act solely as a common carrier and to prescribe reasonable requirements for the attachment of equipment to its network; and

(e) prohibit Bell Canada and other members of the Bell group from applying for or holding a broadcasting licence.

These recommendations reflected the principal submissions of the Director during the CRTC's public hearings on this matter.

Subsequent to the publication of the CRTC's report, the Minister of Communications announced that the Government had accepted the CRTC's recommendations and would act quickly to introduce the necessary legislation. Accordingly, the Attorney General dropped his appeal concerning the interpretation of Bell Canada's Special Act. The nature of the Attorney General's appeal and the events leading up to it were discussed fully at page 79 of the 1983 Annual Report. Bell completed the necessary steps in its corporate reorganization in the spring of 1983.

On February 6, 1984, the Bell Canada Reorganization Act received First Reading in the House of Commons as Part I of Bill C-20. This legislation will implement all of the CRTC's legislative recommendations except that concerning the creation of a minority shareholder interest in Bell Canada. This legislation is the first to expressly empower a federal regulatory agency to require a regulated company to provide competitive services through a separate business organization. Representatives of the Director participated with representatives of the CRTC, and of the Departments of Communications and Justice, in the preparation of this legislation.

As of March 31, 1984, Bill C-20 was awaiting Second Reading.

(12) *Radio Common Carrier Interconnection with Federally Regulated Telephone Companies*

On January 28, 1983, the CRTC issued Telecom Public Notice 1983-14, which invited comments from the federally regulated telephone companies and all other interested parties on the subject of radio common carrier interconnection. The Director has closely followed this issue for a number of years and has addressed the matter previously before the CRTC in two separate proceedings, further details of which appear at page 81 of the 1983 Annual Report. On April 5, 1983, the Director filed comments on the subject with the CRTC in this proceeding.

In his submission, the Director argued that it was in the public interest for radio common carriers and, in particular, for providers of cellular radio service, to interconnect with the public switched telephone network. In order to ensure equal and fair competition between the radio common carriers (RCC) and the public switched telephone companies, the Director argued that the CRTC should ensure that the RCCs had the right to interconnect their switching equipment with the public network at the same level, and on the same terms and conditions, applying to the competing equipment of the telephone companies.

In addition, it was apparent that the telephone companies were in a position to implement new services in a speedier fashion than competing RCCs and that such a head start would place the latter at a competitive disadvantage. Accordingly, the Director argued that steps should be undertaken to ensure that both the telephone companies and the RCCs commence

operation of their respective services at the same time. In the Director's view, it was also desirable to impose a requirement on the telephone companies that they operate the relevant services through separate subsidiaries. Such a requirement would help the regulator ensure that the telephone companies do not cross-subsidize their competitive services.

The Director also submitted that approval of interconnection by cellular and other mobile radio operators would not erode the telephone companies' revenues from long-distance (MTS) and wide area telephone services (WATS). In fact, the revenues of the telephone companies from these services might well increase given the potential for market growth as a result of the increased availability of mobile telephone service which would result from such interconnection. Lastly, in noting that only two competing cellular systems would be licensed in each market in Canada, the Director urged the CRTC to remove the telephone companies' prevailing restrictions on the resale and sharing of mobile radio services in order to take advantage of the stimulating effect that resale and sharing can have on competition.

On March 22, 1984, the CRTC released Telecom Decision 1984-10. The CRTC concluded that the interconnection of cellular and conventional public and private mobile radio systems to the public switched telephone network was in the public interest. Contrary to the arguments of the telephone companies, the CRTC concluded that interconnection would not lead to a significant erosion of their long-distance service revenues in the foreseeable future. On this basis, the CRTC has directed all federally regulated telephone companies to enter into negotiations with conventional public and private mobile radio operators and with CANTEL, the company licensed by the Department of Communications to compete nationally with the cellular services offered by the telephone companies, in order to facilitate interconnection.

All federally regulated telephone companies are required to file written reports with the CRTC on or before July 23, 1984, indicating the status of their negotiations. Tariffs applying to the interconnection of radio common carriers must be filed by telephone companies on or before September 17, 1984. Interested parties will then be provided the opportunity to submit further comments.

(13) *New Brunswick Telephone Company Limited Application for an Interpretation of Certain Provisions of Its General Tariff*

On November 3, 1982, the New Brunswick Telephone Company, Limited made an application to the Board of Commissioners of Public Utilities of the Province of New Brunswick for an interpretation of Items 1230.2 and 1600.3 of its General Tariff respecting Network Extension Telephone Service (i.e., radio paging) and Call Completion Services (i.e., telephone answering service). In its application, New Brunswick Telephone Company requested an interpretation that would permit the company to eliminate hook-up charges for those customers transferring to Network Extension Telephone Service or Call Completion Service from the services offered by radio common carriers whose assets the company had acquired. The matter was described in detail at page 81 of the 1983 Annual Report.

At that time, the Director was considering the advisability of an appeal against the ruling of the Board that the Director did not have capacity as a person to intervene before it, which decision was based upon the ruling of Justice Pace of the Supreme Court of Nova Scotia, Appeal Division, discussed at pages 63 and 64 of the 1983 Annual Report.

On June 1, 1983, the Director made an application to the New Brunswick Court of Queen's Bench for a judicial review of the ruling of the Board. The matter was heard before Justice Hoyt of the Court's Trial Division on August 24, 1983.

On November 16, 1983, Justice Hoyt rendered a judgment dismissing the application of the Director. In his reasons, Justice Hoyt expressed doubt that subsection 27.1(1) of the Act, which specifically authorizes the Director to appear before federal regulatory boards, precluded the Director from intervening before other regulatory boards. However, his doubts on this issue were not sufficient to cause him to disagree with the 1981 judgment of Justice Pace.

Justice Hoyt's decision was subsequently appealed by the Director to the New Brunswick Court of Appeal on December 12, 1983. The appeal was heard on March 15, 1984, and a decision by the Court was pending as of March 31, 1984.

(14) *Tiering of Cable Services and Universal Pay Television*

The Canadian Radio-television and Telecommunications Commission (CRTC) called for comments on this subject in Public Notice 1982-63 of July 7, 1982. The Director filed comments on the matter on September 20, 1982, and appeared before the CRTC during the week of November 30, 1982, at the public hearings.

Programming services which are retransmitted by cable on television channels 2 to 13 are commonly referred to as the "basic service," while others offered on channels made available through the use of a converter are referred to as the "augmented channel service." Historically, cable companies charged their subscribers a single fee for all programming services. With the advent of discretionary services, including pay television and specialty programming and nonprogramming services, the CRTC chose to consider the possible establishment of a tiered system by cable television companies. Tiering is the combining of one or more of the services offered by a cable company into a package which is sold to subscribers for a monthly charge. A multiple tiering arrangement could include a first, possibly mandatory, package and one or more discretionary packages.

In its Notice, the CRTC invited comments respecting what services should be included in the basic and subsequent tiers, the need for a requirement that cable operators wishing to reassign services among the various discretionary tiers seek CRTC approval and the need for the CRTC to regulate the retail price of discretionary tiers. In addition, the CRTC invited comments on the desirability of a mandatory universal pay television service. A universal service involves the addition to all existing cable system packages of one new channel for which all cable television subscribers would be required to pay a nominal fee in addition to their current payment for service. The universal service in question would, by and large, carry only Canadian programs.

In his submission, the Director argued that the CRTC should minimize its regulation of tiered cable service in order to permit the maximum level of competition to develop among providers of the service. Specifically, the Director recommended that all tiers, including the basic service tier, should be offered on a discretionary basis. Accordingly, the Director opposed the introduction of a mandatory universal pay television service. In addition, the Director recommended that, with the exception of the first or basic tier, neither the rates charged for discretionary tiers nor their content should be regulated. In the event that the CRTC chose to require consumers to purchase the basic tier before permitting them to subscribe to any other tiers, the Director urged the CRTC to impose accounting procedures on cable companies which would help detect any attempts by them to cross-subsidize their discretionary tiers from the revenues of their basic monopoly service.

On October 26, 1983, the CRTC issued Public Notice 1983-245, outlining the CRTC's policies respecting tiering and universal pay television. The CRTC elected to continue its requirement that the basic cable service include all local off-air Canadian channels offered in an operator's service area. Similarly, operators retained the right to offer the three American commercial networks plus the programming of the American Public Broadcasting System. In addition, the CRTC required that any subscriber wishing to obtain a discretionary tier must first acquire the basic tier. The specific mix of programming offered on individual discretionary tiers was left to be determined by cable operators, but they will be required to offer one or more Canadian pay television or specialty services with each foreign specialty service offered in a tier. The CRTC also required, as a general rule, that the overall number of Canadian services carried on a cable system exceed the number of foreign services. In addition, the policy included a specific prohibition respecting the carriage of foreign premium pay television services, such as Home Box Office, on Canadian cable systems.

The CRTC concluded that the information available to it concerning the costs and benefits of mandatory universal pay television was inadequate and consequently chose not to introduce such a service for the time being. In addition, the CRTC refrained from approving the carriage of superstations by cable operators until such time as it can obtain additional information concerning the potential impact of those services on the advertising revenues of local broadcasters in each broadcast region. Lastly, the CRTC concluded that its existing procedures for reviewing the cost separations procedures of the cable operators were sufficient to obviate the need for the additional accounting procedures recommended by the Director in light of the potential for the cross-subsidization of discretionary tier offerings by the basic service offering.

(15) *Review of Proposed Canadian National Acquisition of an Interest in Cast Container Group*

The Cast Container Group has been engaged in the shipping container liner business in the North Atlantic trade for the past several years. In late October 1982, the Director took notice of what was projected to be a substantial integration of Cast's transatlantic shipping interests into the already extensive multi-modal transportation system of Canadian National Railway Company (CN). This further transaction would have given CN a majority interest and effective control over the shipping business of Cast, and thus it raised, in the Director's opinion, certain issues in respect of the maintenance of competition.

On November 8, 1982, the Director filed a section 27.1 statement of intervention before the Water Transport Committee (WTC) of the Canadian Transport Commission, which was already investigating the matter pursuant to subsection 27(3) of the National Transportation Act (NTA). The Director's intervention essentially expressed his views on the need to assess this acquisition through a cost-benefit analysis of inter-modal control, ownership and integration. Briefly stated, the benefits of integration (i.e., the complementary aspects of inter-modal ownership) must be compared to the corresponding cost likely to flow from excessive market control (i.e., the monopolistic aspects of inter-modal ownership).

The matter was postponed at various times until September 1983. By then CN had informed the WTC that it had recently withdrawn its option to gain effective control of the Cast shipping interest. This turn of events greatly reduced the thrust and relevance of the Director's concern over inter-modal integration at these particular proceedings, since the remaining issues related to a much less significant acquisition. During hearings in September and October 1983, the Director was represented by counsel but did not lead any evidence. In final argument, counsel for the Director referred to the potential abuses of inter-modal integration and cautioned against a decision to not disallow the acquisition under review becoming a precedent. The Director also expressed a willingness to assist in preparing the terms of reference for a more comprehensive inquiry into inter-modal integration, under section 22 of the NTA.

On February 10, 1984, the WTC released its decision not to disallow the proposed acquisition. The Committee reiterated the commitment it made during the hearings to hold an inquiry under section 22 of the NTA.

(16) *Federal Express — Application to Amend Its Commercial Air Services Licence*

The Air Transport Committee (ATC) of the Canadian Transport Commission (CTC) held hearings in December 1982, and January and February 1983, to review Federal Express' application to extend its international specific point licence in order to facilitate its courier service operation. The Director intervened in this matter in support of the application by Federal Express and appeared before the ATC personally to give testimony. The Director's position was that Federal Express was an innovative, efficient supplier of time-sensitive courier services that would provide an important competitive pressure on the industry if granted expanded authority.

In Decision 7700, dated October 25, 1983, the ATC granted the Federal Express application with minor amendments. The decision reflected an important interpretation of the statu-

tory test for operating authority, "Public Convenience and Necessity." In this regard, the ATC found that while there was insufficient evidence of a public necessity, the services proposed would offer to the user public a positive and substantial added convenience and that the additional competition resulting would be to the net benefit of the public.

In November 1983, a number of competitors of Federal Express in the supply of air courier services applied to the CTC and the Minister of Transport for review of the CTC's decision. Applications were also made to the Federal Court for leave to appeal the decision.

On February 23, 1984, the Federal Court granted leave to appeal. The Director was a party of record opposing the leave application. The appeal is expected to be heard in the fall of 1984.

(17) *Air Ontario Ltd. — Application for Scheduled Passenger Service, Sudbury and North Bay, Ontario*

On January 19, 1983, the Director submitted a letter of intervention to the Air Transport Committee (ATC) of the Canadian Transport Commission in support of an application by Air Ontario to provide service in Ontario between North Bay, Sudbury and Toronto.

The letter made two specific points: that it was in the best interests of North Bay and Sudbury consumers that a certain degree of choice exist in airline transport to and from Toronto, and that there would be no substantial harm to existing carriers or to the public as a result of granting the application.

On October 5, 1983, the ATC issued Decision 7669, which denied the Air Ontario application. The ATC noted that the proposed service has the potential of diverting traffic from Air Canada and Voyageur Airways. Moreover, the ATC noted that the statistical data does not support the applicant's claim that Air Canada's load factors are excessively high and concluded that additional competition is neither necessary nor warranted.

At year-end this decision was under appeal to the Minister of Transport.

(18) *Air Ontario Ltd. — Application for Scheduled Passenger Service, Hartford, Connecticut*

On December 30, 1982, the Air Transport Committee (ATC) of the Canadian Transport Commission issued a public notice that Air Ontario Ltd., of London, Ontario, had applied for permission to operate a commercial unit toll service between Toronto, Ontario, and Hartford, Connecticut. An application to serve this route was also received from an American carrier, Pilgrim Airlines.

In a letter of intervention to the ATC, dated February 7, 1983, the Director submitted that the service proposed by Air Ontario would provide improved convenience to the travelling public, since there existed only one air carrier between Toronto and Hartford, with a stop-off point, using smaller aircraft than the ones contemplated in this application.

On March 27, 1984, the ATC issued Decision 7940, which approved the applications of both carriers. Approval of each carrier's application was contingent on the acquisition by the other carrier of the appropriate operating authorities from both the United States and Canada. This was done to prevent one of the carriers from gaining an advantage over the other by being able to commence operations first.

(19) *Ontario Securities Commission — Review of the Role of Financial Institutions in the Brokerage Industry*

Following the decision of the Ontario Securities Commission (OSC) to unfix brokerage rates in Ontario (see pages 70 and 71 of the 1983 Annual Report), the Toronto-Dominion Bank introduced its Green Line Investor Service (GLIS), which offered bank customers all the services of brokerage firms with the exception of the actual execution of trades.

GLIS raised considerable controversy in the financial community, with opponents of the plan arguing that it undermined the basic structure of the financial industry within which banks, trust companies, insurance companies and brokers maintain distinctly separate operations. Soon after the GLIS service was announced, the OSC requested that it be withdrawn pending the results of its hearing into the general question of the proper role of financial institutions in the brokerage industry. The hearing commenced on June 20, 1983.

The Director intervened at these hearings arguing that, while he fully supported the introduction of innovative services in the financial marketplace which would encourage lower brokerage rates and improved service to investors, he was concerned that the full participation of the banks in the brokerage industry could ultimately lead to their dominance of it, given their size relative to other participants in the market. The Director suggested that all stock transaction orders should be placed with a stock broker, thereby encouraging banks and brokers to compete for the savings and loans requirements of investors. Banks and brokers would, however, be encouraged to network other banking broker services in an attempt to provide the concurrence and innovative features of GLIS. This alternative to the Green Line type of service would, while encouraging innovation, reduce the risk that the banks might come to play too large a role in the brokerage industry.

On October 31, 1983, the OSC in handing down its decision in this matter established that the "core function" in the brokerage sector of the financial industry was underwriting. The OSC found that the soliciting of sales and the provision of advice to clients by brokers were activities that were essential to the underwriting function of the brokerage industry. Accordingly, the OSC permitted banks to act as securities access brokerage agents provided they registered as such with the OSC. The terms of registration prohibited the banks from engaging in soliciting or giving advice and compelled them to abide by the "suitability rule," which required agents to inform clients when a planned investment is not in the client's best interest.

(20) *Voyageur Airways — Application for Scheduled Passenger Service between Toronto Island Airport and Windsor, Ontario*

On January 21, 1983, the Air Transport Committee (ATC) of the Canadian Transport Commission issued notice that Voyageur Airways Limited had applied to operate a commercial air service between Toronto Island Airport and Windsor, Ontario.

In a letter of intervention dated March 2, 1983, the Director stated that the proposed service would provide improved convenience to the travelling public, since there was no scheduled airline service between Toronto Island Airport and Windsor, Ontario. In addition, the Director wrote that the granting of this application would result in a greater choice of through services between Windsor and Sudbury and North Bay.

On August 11, 1983, the ATC issued Decision 7529 permitting Voyageur Airways to fly from Windsor, Ontario, to Toronto Island Airport, with aircraft restrictions. The ATC in its decision noted that the proposed service would provide an alternative means of transportation to the travelling public and that the service would be directed at a different market from that presently offered.

(21) *Kelowna Flightcraft Air Charter Limited — Application for Scheduled Passenger Service*

On February 15, 1983, the Air Transport Committee (ATC) of the Canadian Transport Commission issued a notice of hearing concerning a proposed air service by Kelowna Flightcraft Air Charter Limited linking the cities of Kelowna, Penticton, Vancouver and Spokane, Washington.

Evidence on behalf of the Director was given by an expert witness, Dr. G.B. Reschenthaler, at hearings held at Kelowna, British Columbia, in April 1983. His presentation in support of the applicant included a critique of the rationale of airline regulation in Canada and a discussion of general evidence of workability of competition in the airline industry.

In his final argument before the ATC, counsel for the Director stated that the ATC should consider the recent public policy shift to greater emphasis on competition as a regulatory instrument. Examples of this shift in public policy were cited, such as the expansion of the competitive role of CP Air on domestic routes, as well as the introduction of domestic Advance Booking Charters. Counsel for the Director added that there should be no artificial limit placed on competitive behaviour within potentially competitive markets. The ATC's attention was drawn to the fact that increased competition can be expected to result in increased efficiency and improvements in service and passenger convenience, and that, therefore, the ATC should place an increasing emphasis on competition in determining public convenience and necessity.

On October 11, 1983, the ATC released Decision 7673, approving the application by Kelowna Flightcraft, with frequency, traffic and equipment restrictions. The ATC concluded that the entry into this market by Kelowna Flightcraft, bringing with it a measure of competition, would have little effect on the operations of Pacific Western Airlines, the incumbent carrier, but may result in considerable benefits for the public.

(22) *CTC Review of the Economic Regulation of Commercial Air Services Using Rotary Wing Aircraft*

On April 29, 1980, the Minister of Transport initiated a period of relaxed regulation to free helicopter charter carriers from the requirement to file long-term rates applying to charters of 30 days or more. The Canadian Transport Commission (CTC) was asked to exempt already licensed helicopter charter and specialty service carriers from all but the financial requirements of licensing (including Public Convenience and Necessity) so that they might provide services using helicopters in weight groups for which they were not authorized. The CTC was to monitor the effects of these changes over three years, at the end of which the regulations were to be reviewed to determine whether the changes would be retained and whether further deregulation would be desirable.

On February 3, 1983, the CTC's Air Transport Committee (ATC) issued a notice of public hearing concerning all factors relating to the economic regulation of commercial air services using rotary wing aircraft, but excluding specific individual licence applications.

The Director, in a written submission dated April 11, 1983, indicated that the introduction of increased competition within the helicopter industry would promote a better overall industry performance. The submission suggested that with about 130 firms of varying size in the industry, the loss of a few firms that are unable to meet the competition of more efficient rivals would not put in jeopardy the provision of service throughout the country. It pointed out that the contestable nature of helicopter markets, due to the mobility of helicopters and the ability to adjust fleet size rapidly by leasing aircraft, removes, to a great extent, the need for regulation to protect against the possibility of monopoly exploitation.

In view of these factors, the Director recommended that the policy of partial deregulation introduced in 1980 be substantially broadened by: (a) extending the long-term tariff deregulation to short-term charters, and (b) reducing the requirement that new entrants prove "public convenience and necessity" to a lesser standard such as "fit, willing and able" that would be less restrictive of competition.

On March 2, 1984, the ATC announced that it had decided to continue the trial period of reduced regulation for three years, until December 31, 1987. The ATC concluded that the result of the experiment to give commercial helicopter carriers a freer rein in the realm of economic regulation was obscured by the onset of a recession in the economy. For this reason and also because the industry had continued to perform and serve its markets well, the ATC extended the experimental period of partial deregulation without substantial change.

A change of particular interest was the exemption of long-term charter tariff rates from the provisions of section 113 of the Air Carrier Regulations during the extended period of relaxed regulation. This has the effect of restoring the application of the Combines Act to the

pricing behaviour of the helicopter industry, which had been the subject of regulation by the ATC.

(23) *Review of Canadian National's Payments of Rebates to the Cast Container Group*

The Railway Transport Committee (RTC) of the Canadian Transport Commission held hearings in 1983 to determine whether the payment of commissions to the Cast Container Group by Canadian National raised a question under section 380 of the Railway Act. The Director intervened in these proceedings in order to gain an insight into the competitive issues associated with the payment of these commissions. In September 1983, the Director decided that there was not sufficient reason to be actively involved in the proceedings and therefore withdrew his intervention.

(24) *Services Using the Vertical Blanking Interval or Subsidiary Communication Multiplex Operation*

In response to CRTC Public Notice 1983-77, the Director submitted comments to the CRTC on July 29, 1983, respecting the appropriate regulatory treatment of services to be offered in the future on a commercial basis by broadcasting undertakings using the vertical blanking interval (VBI) and Subsidiary Communications Multiplex Operation (SCMO).

The VBI is an integral part of every television signal broadcasted but is not required to transmit the video image itself. Recent technological developments permit the use of the VBI for the provision of a variety of special services. Similarly, SCMO may be used to provide a number of services over the unused portion of the FM radio broadcast spectrum.

Both VBI and SCMO can be used for the distribution of alpha-numeric services, including electronic newspapers, games and stock market information. In addition, SCMO has the capacity to provide voice and music services. The market for these services is highly competitive, involving telecommunications carriers, paging firms, the print media and, potentially, cable operators. In view of the healthy competitive environment in which such services are offered and the fact that the provision of such services would be ancillary to the broadcaster's main undertaking, the Director proposed that any regulation of the market for these services should be kept to a minimum. Specifically, the Director recommended that the CRTC should seek only to ensure that the transmission of VBI and SCMO services do not interfere with other broadcast signals and that a portion of the available VBI and SCMO transmission capacity should be reserved for desirable noncommercial uses, such as closed captioning for the hearing impaired. In the Director's view there is no need for the CRTC to license providers of such services to control the nature of the VBI and SCMO services offered in the market or the means by which service providers derive revenues from their operations.

As of March 31, 1984, a policy statement on the issue was pending from the CRTC.

(25) *Regulations Affecting Freight Interswitching between Canadian Railways*

Under General Order T-12 the Railway Transport Committee (RTC) of the Canadian Transport Commission requires that upon request of a shipper all freight within a four-mile radius of a railway interswitching point be transferred to any carrier having access to that point. In a letter dated July 29, 1983, the Director responded to a public notice by the RTC calling for comments on the interswitching regulations. The Director recommended a liberalization of the terms and conditions for interswitching and questioned the need for any distance limit on its application. At the same time, the Director cautioned that nondiscriminatory access to railway carriers provided by liberalized interswitching regulations should be afforded at compensatory rates.

(26) *Canada Southern Railway*

Consolidated Rail Corporation (Conrail), Philadelphia, Pennsylvania, controls a series of rail properties in southern Ontario which are generally referred to as the Canada Southern. These properties essentially consist of a double-track tunnel between Detroit, Michigan, and

Windsor, Ontario, a double-track line from Windsor to Niagara Falls and Fort Erie, Ontario, and a double-track bridge at Niagara Falls between Canada and the United States.

The acquisition of these properties by a partnership of Canadian Pacific Limited (CP) and the Canadian National Railway Company (CN) is under review by the Railway Transport Committee (RTC) of the Canadian Transport Commission (CTC) pursuant to section 27 of the National Transportation Act.

In a letter dated August 5, 1983, the Director responded to a public notice of the RTC calling for comments on CN and CP's proposed acquisition. In opposing the proposal, the Director referred to the elimination of competition with CN and CP's rail and other transport operations in southern Ontario and commented that this did not appear to be balanced by substantial benefits to Canadian shippers and the public in general.

In a related application, Erie Express Railway Corp. applied to the RTC for a Certificate of Public Convenience and Necessity as a first step to acquire and operate the Canada Southern. On December 23, 1983, the Director wrote to the RTC in support of the application, observing that the entry of an independent operator in the region would benefit Canadian shippers by providing a spur to innovation and the economic performance of the established railways, CN and CP.

On March 6, 1984, the RTC granted Erie Express a Certificate of Public Convenience and Necessity. The RTC is planning a hearing in June 1984, regarding the acquisition and operation of the Canada Southern.

(27) *Alberta Government Telephones — 1983 Rate Application*

On February 1, 1983, Alberta Government Telephones (AGT) applied to the Alberta Public Utilities Board for a general rate increase. The Board conducted hearings on the matter during August and October 1983.

The Director's involvement in the proceedings stemmed from his participation in the Board's 1982 hearing on terminal attachment. During the course of that hearing the Director had sought to present expert evidence concerning the inadequacy of an accounting procedure employed by AGT known as the contribution test. The services offered by AGT are separated into basic, or regulated, and non-basic, or unregulated categories. The contribution test is designed to determine if the aggregate revenues of the non-basic services make a net contribution to the basic service category. However, because the test does not examine the profitability of individual offerings, it does not permit the Board to determine whether one non-basic service subsidizes another within the same category. This is particularly significant in view of the fact that some of AGT's non-basic services, such as the publication of its yellow pages directory, are effective monopolies. The contribution test cannot establish whether the revenues of such services are used to permit the company to reduce the prices charged for other non-basic services offered in competition with independent firms in the market.

At the time of the 1982 hearings, the Board refused to consider the evidence of the Director's expert witness concerning the contribution test but indicated that it would be a suitable topic for consideration in a future hearing dealing with more general issues. Accordingly, the Director sought to raise the issue again during the Board's 1983 general rate proceeding.

Although questioned on the subject by counsel for the Director during the prehearing conference of March 3, 1983, the Board refused to indicate whether or not it would be willing to discuss the contribution test in detail in the course of the rate hearing. However, a subsequent decision by the Board in respect of an earlier AGT rate application indicated that the Board was unlikely to give serious consideration to the Director's expert evidence on the issue if further attempts were made to present it. Consequently, while the Director participated in the 1983 rate hearing, expert evidence on the subject of the contribution test was not presented.

Attempts by counsel for the Director to direct his cross-examination of witnesses to the subject of the contribution test during the course of the hearing were terminated at the insis-

tence of the Board. Nevertheless, sufficient information was elicited on the subject from AGT witnesses to permit the Director to submit a final argument to the Board questioning the efficacy of the test.

The Director's final argument was filed on November 7, 1984. The Director noted that in 1982, AGT's profit from the provision of its yellow pages directory accounted for virtually all of the contribution from non-basic to basic services. In light of this fact, it appeared that AGT's provision of other non-basic activities, such as the sale of terminal equipment, were not contributing to the basic service and therefore may not have been recovering their full share of the company's costs of engaging in those competitive activities. In addition, the Director submitted that the record of the hearing suggested that AGT's competitive services were not covering their full share of the company's debt and equity costs. Accordingly, the suitability of the contribution test as a safeguard against the cross-subsidization of AGT's competitive services with revenues from its monopoly services was in serious doubt.

As of March 31, 1984, the Board had not rendered a decision in this matter.

(28) *Interconnection in the Telecommunications Industry in New Brunswick*

On September 12, 1983, the Board of Commissioners of Public Utilities of the Province of New Brunswick issued a notice announcing that a public hearing would be held to consider issues relating to interconnection in the telecommunications industry in New Brunswick. The Director filed a Notice of Intention to participate with the Board on October 24, 1983.

A prehearing conference was held in Saint John, New Brunswick, on November 21, 1983, at which time counsel for N.B. Tel objected to the appearance of the Director as an interested party in the hearing on the basis of a previous ruling made by the Board in March 1983. At that time, as discussed in detail at pages 81 and 82 of the 1983 Annual Report, the Board ruled that the Director did not have capacity as a person to intervene before it. Despite the argument raised by N.B. Tel, the Board ruled that the Director could bring evidence before it in the present proceeding which would assist it in its deliberations and allowed the Director to participate in the hearing as an interested party.

A further notice was issued by the Board on January 20, 1984, inviting comments from interested parties on the following subjects:

(a) the attachment of customer-owned single-line terminal equipment to the public switched network;

(b) the attachment of customer-owned multi-line terminal equipment to the public switched network;

(c) the interconnection to the public switched network of communication systems owned by customers or other carriers;

(d) the substitution of competing message toll services for N.B. Tel's Message Toll Services accomplished by the interconnection to the public switched network of other public transmission facilities or by the sharing and reselling of interconnected transmission facilities leased from the telephone company or another carrier; and

(e) the by-passing of the telephone company's local exchange plant by privately owned or other public transmission and switched facilities.

Participants in the hearing were invited to address the following issues with respect to the five levels of interconnection identified above:

(a) the impact of competition on N.B. Tel's revenues, the quality of service, consumer choice, the price of telecommunication products and services, technological progress and employment;

(b) the impact of competition on universal access to the telephone service and on the obligation for N.B. Tel to provide telephone service on demand throughout New Brunswick;

(c) the impact of competition on the N.B. Tel process for planning and provisioning the telephone network; and

(d) the changes which competition may cause to the regulatory process, and the legislative changes which might be necessary to preserve the traditional goals in the provisioning of telephone service.

The Director filed a written submission with the Board on March 5, 1984, along with the evidence of two expert witnesses, W.H. Melody of Simon Fraser University and Charles M. Dalfen of Ottawa, who will be appearing for the Director during the forthcoming hearing scheduled to commence on May 7, 1984. These submissions argue that competition in the provision of telecommunications products and services will provide users with an enhanced choice of equipment and services, lower prices and increased efficiency and flexibility. They also address the various regulatory tools available to the regulator to prevent cross-subsidization of competitive services by monopoly services, as well as complementary mechanisms which could be implemented to speed up the development of fair competition in the market. The Director submitted that reliance on accounting methodologies and reporting procedures cannot provide adequate protection against cross-subsidization and would greatly increase the regulatory burden. In the Director's view, the Board should require that all N.B. Tel's competitive services be offered through a separate subsidiary in order to minimize the potential for cross-subsidization and the Boards' regulatory involvement in monitoring N.B. Tel's competitive activities.

(29) *Telesat Canada — Final Rates for 14/12 GHz Service: Resale and Sharing*

The CRTC conducted a hearing commencing the week of October 25, 1983, for the purpose of establishing rates and policies applicable to Telesat Canada's provision of 14/12 GHz satellite services. The CRTC indicated that it also intended during the course of its proceeding to consider the possibility of allowing the resale of excess satellite channel capacity held by broadcasters. The Director intervened in the proceeding to address the resale issue.

Telesat does not permit users of its services, other than common carriers, to lease less than a full satellite channel. In addition, Item 3.1 of Telesat Tariff 8001 requires users to obtain Telesat's permission before engaging in resale or sharing. The Director held that Telesat was abusing its monopoly position in the provision of satellite services in Canada by consistently refusing to grant permission to resell or share channel capacity to any users of its services, other than regulated common carriers, without just cause. In the Director's view, this practice was unreasonable in that it precluded other users from competing with the members of Telecom Canada in the resale market. In this regard, in the course of the public hearing, the Director presented expert evidence favouring the permitting of resale and sharing on the basis of the contribution such activities would make to the economically efficient use of Canada's satellite transmission system.

The Director's final argument urged the CRTC to amend Item 3.1 of Telesat Tariff 8001 to permit broadcasters to engage in the resale of satellite services to other broadcasters without the prior approval of Telesat. It was the Director's position that broadcasters should be required to discontinue resale only when Telesat is able to demonstrate to the satisfaction of the CRTC that such a requirement is justified.

In Telecom Decision CRTC 84-9 of February 20, 1984, the CRTC ruled, in keeping with the Director's recommendation, that Item 3.1 of Telesat Tariff 8001 should be construed, on a prima facie basis, as permitting broadcasters to assign, transfer or sublet excess capacity to other such undertakings for broadcast programming purposes.

(30) *Alberta — Review of Intercity Bus and Trucking Regulation*

On September 6, 1983, the Honourable Marvin Moore, Minister of Transport for Alberta, solicited comments on a proposal to relax substantially restrictions on entry into some intercity bus and trucking markets.

The Province of Alberta regulates its intraprovincial motor carriers differently from its extraprovincial counterpart. Entry into extraprovincial trucking is far more regulated than trucking within the province.

On November 7, 1983, the Director wrote to the Minister and expressed his support for the initiative but also held the view that while present entry policies had the effect of fostering a highly competitive and efficient trucking industry within the province, it made it quite difficult for new competition to develop in extraprovincial markets. The Director emphasized that easier entry is needed, particularly in extraprovincial trucking markets where there appears to be little effective competition.

On January 6, 1984, a news release announced that only entry into intraprovincial charter busing would, for the present, be substantially deregulated. This new policy does not alter the present state of extraprovincial regulation for charter buses or trucking.

(31) *Manitoba Review of Motor Carrier Regulations*

In a letter dated November 25, 1983, the Director sent comments to the Government of Manitoba's Task Force Review of Motor Carrier Regulations. Regarding the regulation of entry, the Director referred to the Task Force's report, *Manitoba Motor Carrier Industry: Problems, Issues, Options*, where there were numerous examples of regulation inducing inefficiency in the motor carrier industry. In attacking regulatory barriers to entry in the industry, the Director recommended the removal of the test of Public Convenience and Necessity, or at the least a shifting of the onus of the test to carriers opposing an application for operating authority.

(32) *Pay Television*

The CRTC conducted public hearings to review its pay television policy during the week of November 29, 1983, in response to Order in Council P.C. 1983-2878 dated September 20, 1983.

The Order in Council was issued by Cabinet following its review of appeals received concerning CRTC Decision 83-576, which extended the service area of Allarcom Limited, the regional licensee for Alberta, to include Manitoba, Saskatchewan and the Northwest Territories. The Order in Council expressed Cabinet's concern that this apparent amalgamation of regional licences was leading, in effect, to the creation of a second national pay television service in competition with First Choice Communications Corporation in the absence of due consideration of the implications of this development in light of the different obligations originally imposed by the CRTC on regional and national licensees. In addition, the CRTC indicated its intention to deal with a new application by Aim Satellite Corporation, the regional licensee for British Columbia, for approval to transfer effective control of its operations to Allarcom.

The Director intervened in the proceeding to support the expansion of Allarcom's operations as a means of introducing competition into areas where First Choice was, at the time, the only supplier of pay television services. In addition, in order to ensure that competition in the provision of pay television services proceeded on an equitable basis, the Director recommended that any operational obligations the CRTC chose to impose in a particular region should apply equally to all pay television operators in that region, regardless of whether their licences had been granted on a regional or a national basis. It was the Director's view that the events which had occurred in the Canadian pay television market, including the demise of C Channel and the current expansion of Allarcom, were natural responses to the normal workings of the marketplace.

On January 5, 1984, the CRTC issued a decision approving the expansion of the service area of Allarcom Limited and permitting the company to acquire effective control of Aim Satellite Corporation. In addition, the CRTC revised Allarcom's conditions of licence in keeping with the Director's general position on the issue of operational obligations to be imposed on licensees.

(33) *Attachment of Customer-owned Terminal Equipment to the Public Switched Network in Nova Scotia*

On July 18, 1983, Maritime Telegraph and Telephone Company Limited (Maritime Tel) applied to the Board of Commissioners of Public Utilities for the Province of Nova Scotia for approval of certain modifications to its general tariff to allow for the connection to its telephone network of customer-provided terminal equipment and of conditions and rates related to the rental by Maritime Tel of terminal apparatus.

On October 6, 1983, the Board issued a notice announcing that a hearing would be held to deal with the matter starting on November 28, 1983. On November 7, 1983, the Director notified the Board of his intention to appear at the hearing and filed evidence prepared by his expert witness, Charles M. Dalfen of Ottawa. Mr. Dalfen also delivered testimony on behalf of the Director during the public hearing on the issue, which commenced on January 30, 1984.

During the hearing, the Board examined the potential advantages and disadvantages of allowing the introduction of competition in the provision of terminal equipment (customer-owned residential telephones and business switchboards) in Nova Scotia and related matters. Evidence was also introduced on the different means available to the Board to ensure that competition in terminal equipment would proceed on sound grounds and that cross-subsidization of Maritime Tel's competitive services with revenues from its regulated monopoly activities would not occur.

In this regard the Director argued that the Board could most effectively avoid undesirable cross-subsidization by insisting that Maritime Tel offer competitive services through a separate subsidiary. The Director argued that accounting safeguards and ongoing regulatory supervision could not alone offer adequate protection against cross-subsidization and would greatly tax the resources of the Board.

On March 31, 1984, the proceedings were adjourned until April 12, 1984.

(34) *Domestic Air Fare Policy Review*

At the request of the Minister of Transport, the Air Transport Committee (ATC) of the Canadian Transport Commission (CTC) initiated a hearing into domestic air passenger pricing.

The prehearing conference was held on November 15, 1983, at which time the Director filed detailed questions requesting revenue, cost and traffic data from the carriers.

The hearing was conducted in three phases over the period February to April, 1984, and included regional sittings in major Canadian cities.

The Director called two witnesses: Dr. William Jordan, a professor of economics at the Faculty of Administrative Studies, York University, who has conducted extensive research on the industry, and Robert J. McAdoo, a managing officer of People Express Airlines, Inc. of Newark, New Jersey.

Dr. Jordan's testimony focussed on a comparison of the performance of U.S. air carriers in a deregulated environment, to Canadian carriers operating under the current regulatory regime.

Mr. McAdoo reviewed the raison d'être of People Express Airlines and how the company prospered as a no-frills, low-cost carrier in a deregulated marketplace.

As of March 31, 1984, the proceeding was about to enter its final phase: the cross-examination of principal participants and final argument. The Committee is expected to present their summary of findings and recommendations to the Minister of Transport in May 1984.

(35) *Enhanced Services*

This matter arose from an application to the Canadian Radio-television and Telecommunications Commission (CRTC) by Bell Canada in December 1980 for approval of a Voice

Message Service. The service permits subscribers to place a message in Bell's voice transmission network and have it delivered at a specified time or, in the event of no answer, to have it repeated until delivered.

The Director commented to the CRTC that this application constituted an expansion of Bell Canada's activities into the new area of computer-based services, commonly known as enhanced services, and as such raised a number of competition policy issues. Among these was the possibility that Bell might not be willing to grant potential competitors in the enhanced services market equal access to its public switched telephone network. In May 1981, the CRTC released Telecom Decision 81-10, which approved the Bell service and ordered the company to provide equal access to any potential competitor also wishing to offer a Voice Message Service. In addition, the CRTC announced its intention to provide an opportunity for public consideration of the issues involved in the establishment of appropriate general guidelines governing the provision of all other potential variants of enhanced services. A number of other enhanced services have been proposed by Bell since 1981 for which the CRTC has also given interim approval, or has approved as trials.

In November 1983, the CRTC issued Telecom Public Notice 1983-72 calling for public comments to guide the CRTC in deciding on the appropriate regulatory treatment of enhanced services in general. On February 6, 1984, the Director submitted comments recommending that the CRTC adopt the definition of basic and enhanced services developed by the Federal Communications Commission in the United States. The recommended definition incorporates the view that basic telephone service constitutes no more than a pipeline in which voice and data messages are transmitted without manipulation or enhancement by the common carrier. In this view, any service which goes beyond the simple transmission of messages would constitute an enhanced service. The Director further argued that enhanced services provided by noncarriers should be offered in a competitive market, while those of common carriers should be regulated. Pending further deliberations by the CRTC on the common carriers' costing methodology and on the desirability of requiring the carriers to separate their monopoly and competitive services structurally, the Director also recommended that the CRTC implement a number of safeguards against potential carrier abuses of their monopoly in the provision of basic services. These basic services form an integral part of the enhanced services provided by many noncarriers. In addition, the Director favoured a complete liberalization of the current restrictions on resale and sharing applicable to the provision of enhanced services.

On March 6, 1984, reply comments of a minor nature were filed by the Director in response to submissions by the carriers. A decision from the CRTC was pending as of March 31, 1984.

4. Other Matters

(1) *Container Shipping Services — Port of Montréal*

In May 1983, an inquiry was commenced under sections 32 and 34(1)(c) of the Act with respect to the supply and sale of container shipping and related services through the Port of Montréal. Following the acquisition of two competing container shipping companies, an additional inquiry under section 33 (merger) was commenced later in the year. These matters became public when some of the companies involved informed the news media that they were being investigated under the Combines Investigation Act.

On November 2, 1983, an application was presented before the Federal Court by counsel for some of the shipping firms, pursuant to the Charter of Rights, to have the Bureau's copies of the seized documents along with any notes made therefrom returned to the respective companies.

On December 9, 1983, the Honourable Associate Chief Justice Jerome made a preliminary ruling to have the searches subject to application declared unlawful. The Court adjourned the application on the merits pending the Supreme Court of Canada's decision in the *Southam* case but ordered in the interim that the seized documents be deposited with the Court Administrator.

CHAPTER VII

MARKETING PRACTICES BRANCH

1. Activities

The main function of the Marketing Practices Branch is to deal with complaints and other information from a broad variety of sources with respect to violations of the misleading advertising and deceptive marketing practices provisions of the Act. These provisions play a significant role within the overall framework of competition policy in ensuring that the market mechanism operates effectively and that consumers are protected from deceptive practices. It was with this purpose in mind that the original misleading advertising provisions were included in the Combines Investigation Act in 1960 and 1969 and that the scope of these provisions was expanded by the amendments to the Act which came into force on January 1, 1976.

The misleading advertising and deceptive marketing practices provisions are contained in sections 36 to 37.3 and apply to all persons promoting the supply or use of a product or promoting any business interest. The responsibilities of the Branch are therefore not restricted to any particular industry or type of distribution. Although the legislation in general relates to all representations made to the public and to specified marketing practices, some provisions are restricted solely to representations in the form of advertisements.

Since the number of complaints is large and the staff resources that are available to investigate them are limited, it is necessary to concentrate on those cases that are most likely to bring about an overall improvement in the quality of market information directed to the public, thereby contributing to the objectives of the legislation. The principles followed in assessing the priority of complaints are the degree of coverage of the representation, its impact on the public and the deterrent effect of a successful prosecution. A high priority is also given to cases that will afford a court the opportunity of establishing new principles or of clarifying the law.

The Branch continues to be the only one in the Bureau of Competition Policy to operate on a decentralized basis with investigating officers stationed in 13 offices across Canada. Regional managers, who are located in six of these offices, also maintain the necessary liaison with provincial authorities responsible for consumer protection and trade practices matters. (A complete list of field offices can be found in Appendix VIII.)

2. Proceedings

Prosecutions completed during the year under the former and present provisions of the Act are listed in Appendix II showing the products involved, the persons charged, the location of the offence and the details of the disposition. Summaries of cases in which convictions are registered appear quarterly in the *Misleading Advertising Bulletin* and appeals in such cases are also noted. Prosecutions that are not completed are listed in Appendix IV.

(1) *Operations under Sections 36 to 37.2 of the Act*

The following table shows operations under the present misleading advertising and deceptive marketing practices provisions, beginning with 1979-80. Operations before that time are to be found in previous reports.

OPERATIONS UNDER MISLEADING ADVERTISING AND DECEPTIVE MARKETING PRACTICES PROVISIONS

Part I - Inquiries and Investigations

		1979-80	1980-81	1981-82	1982-83	1983-84
(i)	Total complaints received	10,251	9,382	9,782	11,357	11,054
(ii)	Number of files opened	9,431	8,373	8,557	9,875	10,091
(iii)	Number of complete investigations	2,234	2,147	2,319	2,447*	2,055
(iv)	Referrals to Attorney General under section 15:					
	—section 36(1)(a)	82	93	71	102	113
	(11)(b)	4	18	10	25	19
	(1)(c)	2	—	1	—	1
	(1)(d)	11	11	26	28	24
	36.1	—	—	1	—	2
	36.2	1	4	—	—	1
	36.3	1	—	—	1	1
	36.4	—	—	—	—	—
	37	1	12	1	4	1
	37.1	26	28	30	34	5
	37.2	1	1	2	5	7
(v)	Formal applications for inquiries	—	—	—	1	—
(vi)	Cases formally discontinued	3	6	2	3	—
(vii)	Cases referred to Attorney General and closed on his recommendation:					
	—section 36(1)(a)	12	2	10	5	11
	(1)(b)	—	—	1	—	—
	(1)(c)	—	—	—	—	—
	(1)(d)	—	—	—	1	1
	36.3					1
	37.1	—	—	2	—	—

Part II - Prosecutions

		1979-80	1980-81	1981-82	1982-83	1983-84
(i)	Number of cases before the courts at beginning of year (not including appeals):					
	—section 36(1)(a)	50	59	49	75	67*
	(l)(b)	7	5	11	10	17
	(1)(c)	—	1	1	1	1
	(1)(d)	8	4	6	11	16*
	36.1	2	1	—	—	1
	36.2	1	—	2	2	2
	36.3	—	—	—	—	—
	36.4	—	—	—	—	—
	37	4	1	2	5	3
	37.1	11	10	14	40	42*
	37.2	—	1	—	—	—
(ii)	Cases under appeal at beginning of year:					
	—section 36(1)(a)	8	12	9	11	12*
	(1)(t)	—	2	—	—	3
	(1)(c)	—	—	—	—	—
	(1)(d)	1	1	2	1	1
	36.1	—	—	—	—	—
	36.2	—	1	1	—	—
	36.3	—	—	1	1	1
	36.4	—	1	—	—	—
	37	1	—	1	1	1
	37.1	1	—	2	1	2
	37.2	—	—	1	1	—

Part II - Prosecutions—(Continued)

	1979-80	1980-81	1981-82	1982-83	1983-84
(iii) Proceedings commenced during year:					
—section 36(1)(a)	59	78	98	94	97
(1)(b)	4	13	14	22	21
(1)(c)	1	1	—	1	1
(1)(d)	8	11	25	25	21
36.1	—	—	—	2	1
36.2	1	3	—	—	1
36.3	—	1	—	—	5
36.4	1	—	—	—	—
37	1	3	8	1	2
37.1	29	24	31	33	5
37.2	3	2	3	1	9
(iv) Completed cases, convictions:					
—section 36(1)(a)	54	72	51*	76	73
(1)(b)	2	7	13	8	10
(1)(c)	—	—	—	—	1
(1)(d)	8	6	18	10	16
36.1	—	1	—	—	—
36.2	1	1	1	—	2
36.3	—	—	—	—	—
36.4	—	—	—	—	—
37	3	—	4	1	3
37.1	30	15	4	24	28
37.2	2	1	3	2	6
non-convictions**					
—section 36(1)(a)	22	19	19	26	24
(1)(b)	2	2	2	4	7
(1)(c)	—	1	—	1	1
(1)(d)	4	2	3	9	10
36.1	1	—	—	1	—
36.2	—	1	—	—	—
36.3	—	—	—	—	1
36.4	—	1	—	—	—
37	2	1	1	2	—
37.1	1	3	2	5	1
37.2	—	1	—	—	—
(v) Cases under appeal at end of year:					
—section 36(1)(a)	12	9	10	12*	17
(1)(b)	2	—	—	3	5
(1)(c)	—	—	—	—	—
(1)(d)	1	2	1	1	1
36.1	—	—	—	—	—
36.2	1	1	—	—	—
36.3	—	1	1	1	2
36.4	1	—	—	—	—
37	—	1	1	1	—
37.1	—	2	1	2	5
37.2	—	1	1	—	—
(vi) Cases before the courts at end of year (not including appeals):					
—section 36(1)(a)	59	49	75*	67	62
(1)(b)	5	11	11	17	19
(1)(c)	1	1	1	1	—
(1)(d)	4	6	11	16*	11
36.1	1	—	—	1	2
36.2	—	2	2	2	1
36.3	—	—	—	—	3
36.4	—	—	—	—	—
37	1	2	5	3	2
37.1	10	14	40	42*	15
37.2	1	—	—	—	3

* 1982-83 and earlier preliminary figures revised

** Including conditional and absolute discharges, stays of proceedings, etc.

(2) *Sentencing Principles in Relation to Marketing Practices Offences*

In *R. v. Simpsons-Sears Ltd.* Ferguson C.C.J. imposed a fine of $1,000,000. In the reasons for sentence, the Court determined that the following 16 factors should be addressed in assessing the amount of a fine:

—protection of the public interest in free competition;

—the nature of the offence;

—deterrence;

—the fine must not be considered as constituting a licence fee;

—deterrence to the corporation must be based on the assumption that a convicted corporation is less likely to commit the offence again;

—size of the corporation;

—the nature of the market with respect to the items which are the subject matter of the charge;

—the number of competitors with respect to those products in the market;

—volume of business;

—fines imposed in the past;

—whether the company was aware that it was breaking the law;

—net profit gained through the offence;

—income and ability to pay;

—the presence or absence of moral turpitude;

—whether persons were misled as a result of the unlawful advertising scheme; and

—character of the convicted company.

If the courts recognize the magnitude of the *Sears* fine as an appropriate benchmark, and if they apply the principles outlined above, it could indicate that substantially more severe penalties are in prospect for violators of the Act.

(3) *Subsection 30(2) Order of Prohibition in Relation to Section 36.3*

Shaklee Canada Inc. — Food supplements, cleaning and personal care products

This inquiry commenced in June 1978 following the receipt of a complaint alleging that Shaklee Canada Inc. was operating a scheme of pyramid selling.

Proceedings for an Order of Prohibition were brought in the Federal Court. The case was heard before Mahoney J. of the Federal Court on January 27 and 28, 1981 and, on February 11, 1981, the Information was dismissed. The Crown filed a notice of appeal but at the end of the fiscal year the appeal had not been heard. (For statistical purposes this case is recorded under section 36.3.)

3. Discontinued Inquiries Reported to the Minister in Accordance with Subsection 14(2) of the Act

There were no discontinued inquiries during the year.

4. Other Matters

(1) *Program of Compliance*

The staff of the Branch provided 292 written advisory opinions to firms that had requested review of proposed promotional material under the Director's program of compli-

ance. A majority of compliance opinions relate to proposed promotional contests. In addition, a large number of informal discussions (approximately 541) were held with individual businessmen who wished clarification of the possible application of the misleading advertising and deceptive marketing practices provisions of the Act.

(2) *Misleading Advertising Bulletin*

During the year the Branch's quarterly publication, the ***Misleading Advertising Bulletin***, contained summaries of concluded prosecutions that resulted in convictions under the misleading advertising and deceptive marketing practices provisions of the Act and statements of the Director's position in relation to various issues. Among the issues covered in the Bulletins published during the fiscal year were misleading advertising practices in the housing industry, deceptive distress sales and the use of the "raincheck defence" in cases involving the non-availability of advertised specials. Copies of recent issues of the ***Misleading Advertising Bulletin*** are available from the Communications Branch of the department.

(3) *How to Avoid Misleading Advertising: Guidelines*

A set of guidelines for advertisers derived in part from past articles in the ***Misleading Advertising Bulletin*** and from other established Branch policy positions was published during the year. It was intended to serve as a concise and readily accessible guide to assist businessmen in interpreting sections 36 to 37.3 of the Act. The publication may be obtained from authorized bookstore agents.

(4) *Enquiries, Other Complaints and Media Contacts*

In addition to the services provided under the program of compliance, the Branch undertakes other non-enforcement activities that are designed to achieve a wide dissemination of Branch policies and general information on the misleading advertising and deceptive marketing practices provisions. During the year, the Branch responded to 18,021 enquiries for information from the public and from the business community; individual staff members responded to 160 requests for interviews and information from the media; and 184 educational seminars were given before various business-interest and academic groups. As well, the Branch received 734 non-related complaints that were subsequently referred to the proper authorities.

(5) *Mortgage Complaints*

During the year, the Branch examined 746 complaints relating to the issue of mortgage renegotiations with financial institutions. The issue in 166 of those complaints was whether oral representations made to mortgage-holders at the time of renewal were to the effect that prepayment penalties would only be in the amount of three months interest. After considerable examination, it was concluded that in the case of no complainant was sufficient evidence obtained to justify a prosecution under paragraph 36(1)(a) (see chapter II for more detail).

CHAPTER VIII

Economic Analysis and Policy Evaluation Branch

1. Activities

The Economic Analysis and Policy Evaluation Branch provides in-depth analytical and policy evaluation support for the Director and the Bureau of Competition Policy. Over the past two years the Branch has been increasingly involved in interdepartmental policy development work, in response to new directives from senior management and a growing awareness of the need to assess the competitive implications of a range of government policies. In addition, the Branch carries key responsibilities for coordinating the Ministerial and Deputy Ministerial briefing activities in the Bureau, and assisting in the preparation of representations of the Director's interests in international forums, including multilateral policy discussions and bilateral antitrust relations, especially with the United States.

The Branch is also responsible for the provision of analytical support to the Bureau in relation to enforcement of the Act. The Branch has been assigned a separate, ongoing staff function in relation to strategic planning in the Bureau. Furthermore, the Branch assists in the preparation of interventions by the Director before federal regulatory boards and tribunals, pursuant to section 27.1 of the Act, when required.

Finally, to contribute to the understanding and maintenance of an efficient market system in Canada, the Branch conducts policy-related applied industrial organization studies, both internally and under external contract. Internal studies occasionally take the form of research inquiries pursuant to section 47 of the Combines Investigation Act, which authorizes the Director to undertake studies of conditions or practices related to monopolistic situations or restraint of trade. Studies may be contracted out when collection of information does not involve powers provided in the Act; when recognized external expertise exists; when the project does not rely heavily on Bureau operational experience; and when internal resources cannot be deployed without disrupting existing Branch priorities.

2. Policy Evaluation and Development

(1) *Shipping Conferences Exemption Act, 1979*

A major activity of the Branch for the past two years has been its participation in the interdepartmental review of the Shipping Conferences Exemption Act, 1979 (SCEA). This legislation provides a broad exemption from the Combines Investigation Act for ocean liner freight shipping conferences (cartels) operating in Canadian trade routes. The interdepartmental review committee, chaired by Transport Canada, was established in response to a sunset clause in the SCEA, pursuant to which it was scheduled to expire on March 31, 1984.

A key component of this project was an intervention by the Director in public hearings on the effectiveness of the SCEA, which were held by the Water Transport Committee of the Canadian Transport Commission in major cities across Canada. In this submission, given at Vancouver, on June 29, 1982, the Director called the Committee's attention to:

(a) the importance of liner transport to the Canadian economy;

(b) the danger that excessive freight rates may act as a barrier to foreign trade; and

(c) preliminary evidence of unsatisfactory performance by conferences in Canada.

As a formal contribution to the work of the interdepartmental committee, the Branch prepared, with the assistance of E.M. Ludwick and Associates, a detailed survey of more than 300 Canadian overseas exporters, importers and freight forwarders. The report, entitled *Ship-*

ping Conferences: Survey of Users' Views (Consumer and Corporate Affairs Canada, 1983), documented widespread dissatisfaction with conference arrangements among users. In terms of preferred policy toward conferences, only 16 per cent of firms interviewed favoured retention of the SCEA legislation in its existing form, with the largest single group (42 per cent) favouring outright repeal of the Act.

Based on discussions with users of liner services and select Canadian and international shipping companies, the Branch developed a set of specific proposals for procompetitive changes in the SCEA. A document setting out the proposals was circulated to interdepartmental committee members and industry representatives on March 11, 1983. These proposals, in addition to direct inputs from a broad range of industry groups and academic consultants, were considered by the interdepartmental committee in formulating its recommendations to Cabinet and preparing amendments for introduction in Parliament.

On March 24, 1984, the existing Shipping Conferences Exemption Act, 1979 was extended by Order in Council for a period of up to one year, to allow time for passage of the amendments. On March 27, 1984, the Bill to amend the Act, S-12, was given first reading in the Senate. The amendments are intended to: (i) empower the Canadian Transport Commission, following a public hearing, to remove an individual conference's exemption when considered necessary to protect the public interest; (ii) remove the existing exemption for agreements between conference and non-conference carriers; (iii) clarify that predatory rate setting by conference members will result in the removal of a conference's exemption under SCEA; (iv) establish a statutory right of independent action for all members of conferences in trade routes not served by competing non-conference carriers; and (v) establish that conference loyalty contracts may cover less than 100 per cent of a shipper's cargo, and that the proportion of cargo covered must be determined through negotiation.

The amendments are also intended to strengthen the ability of the Canadian Shippers' Council, a users' organization designated under the Act, to negotiate effectively with conferences, by: (i) requiring advance notice of rate increases and surcharges; (ii) requiring conferences to negotiate in good faith; and (iii) establishing conciliation procedures. Fines for noncompliance with the Act will be increased substantially, and the limitation period for prosecution will be increased from one to three years. When passed, the amendments to the Shipping Conferences Exemption Act are expected to strengthen the bargaining position of users in dealing with conferences and encourage efficiency in the market for liner services.

(2) *Legislation on Import Policy*

As reported in the 1983 Annual Report at page 70, the Director made written and oral representations to the House of Commons Sub-Committee on Import Policy that were primarily concerned with establishing a basis for considering competition policy and other public interest implications in antidumping and countervail inquiries. Subsequent to the Sub-Committee's Report and consideration thereof by an interdepartmental committee, a provision was included in the new legislation on Import Policy which would allow the Anti-dumping Tribunal to receive and consider evidence with regard to public interest considerations and to recommend to the Minister of Finance that the full amount of a dumping or countervailing duty not be imposed if contrary to the public interest. With slight but unsubstantial changes in wording, this provision was included in the legislation which, as Bill C-8, was given First Reading in the House of Commons in January 1984. At the end of this fiscal year, the Bill was still under consideration.

(3) *Interdepartmental Committee on International Shipping Matters*

The Branch participated in the Interdepartmental Committee on International Shipping Matters. This standing committee, chaired by Transport Canada, meets regularly to consider developments in Canada's international maritime trade relations.

As part of this involvement, the Branch participated in a subsidiary Interdepartmental Working Group on Maritime Defensive Legislation, which examined possible means of

responding to restrictive foreign government shipping policies. The Branch also undertook a preliminary inquiry into competitive conditions in Canada-Brazil trade. Partly as a result of the Branch's work in this area, the Canadian Transport Commission has initiated a formal inquiry into Canada-Latin America maritime trade conditions, pursuant to section 22 of the National Transportation Act.

(4) *Intellectual Property*

During 1983-84, the Branch was assigned responsibility for the Bureau's participation in the review and development of revisions to Canadian patent and copyright legislation. The Branch participated in departmental discussions regarding revisions to the Canadian Copyright Act, especially in the areas of copyright societies (collectives) and compulsory licensing. Work has also been undertaken on patents and on compulsory licensing in the Canadian pharmaceuticals industry.

3. International Relations

The Bureau's international relations activities involve: (i) bilateral cooperation with the competition policy enforcement agencies of other countries (notifications, exchanges of information and consultations); and (ii) participation in multilateral policy discussions regarding the control of restrictive business practices and related matters.

In the area of bilateral relations, a major activity during the year was the preparation of a Memorandum of Understanding concerning the application of U.S. and Canadian antitrust laws in situations that affect the interests of both countries. This Memorandum was signed on March 9, 1984, by the Honourable Judy Erola, Minister of Consumer and Corporate Affairs, William French Smith, U.S. Attorney General, and James C. Miller III, Chairman of the Federal Trade Commission.

The Understanding provides a framework for improved and expanded cooperation between the two countries in antitrust activities, and establishes notification and consultation procedures to be followed by each country when its antitrust enforcement activities affect the jurisdiction or public interest of the other. Either government may request consultations aimed at eliminating or minimizing conflicts. Each government will refrain from pursuing antitrust proceedings until there has been an opportunity for consultation. In addition, the two governments will cooperate in the enforcement of antitrust laws by exchanging information to the extent consistent with national laws and interests, and subject to assurances respecting confidentiality. The new understanding supersedes previous bilateral agreements covering cooperation between the two countries in the area of antitrust enforcement.

In the area of multilateral relations the Bureau continues to be actively involved in the work of the OECD Committee of Experts on Restrictive Business Practices. In March 1984, the OECD published a report by the Committee entitled *Competition Law Enforcement, International Cooperation in the Collection of Information*. The report makes suggestions to OECD member countries to strengthen cooperation in competition investigations and reduce conflicts relating to collection of information.

The Working Party on Competition and Trade, which is chaired by the Director, completed the first phase of its work. A report prepared by the Working Party on issues arising at the frontier of competition and trade policies was approved by the Committee of Experts in February 1984. This report examines the commercial activities of private firms and governments which fall within the scope of competition policy and which have implications for international trade. The report also analyzes a range of trade policy measures (in particular non-tariff barriers) with a view to presenting a framework that governments could use to assess the economic effects of such policies, including their impact on market structure and performance. Finally, problems of law enforcement, including jurisdictional issues, are discussed with a view to assessing the scope for improved participation of competition authorities in trade-related matters.

The Bureau was also involved during the year in the work of the Intergovernmental Group of Experts on Restrictive Business Practices, established by UNCTAD to perform the functions designated in the Set of Principles and Rules for the Control of Restrictive Business Practices (described in the 1980 Annual Report). This Intergovernmental Group held its second sessions in Geneva from November 21 to 30, 1983. A member of the Branch was reelected spokesman for the "Group B" member countries.

4. Briefing Coordination

The Branch has been assigned an important new responsibility for coordination of the Bureau's participation in the government policy decision-making process. Through advance monitoring of government policy initiatives and provision of timely and consistent briefing materials to the Minister and Deputy Minister, it is intended to ensure that the competition policy implications of government policy initiatives are fully considered in the decision-making process, particularly by the Cabinet Committee on Economic and Regional Development. This responsibility entails monitoring the development of government policy initiatives, assessment of their competition policy implications, identification of opportunities for effective and timely intervention in the policy process, coordination of the preparation of appropriate briefing materials, and regular reporting to the senior management of the Bureau of the briefing activities carried out by the Bureau and by the department. The briefing coordination function was instituted in the early part of 1984. It is expected to become fully operational in 1984-85.

5. Strategic Planning in the Bureau

In 1983-84, the Branch was assigned a staff function to the Bureau Management Committee to assist in the development of an annual Strategic Plan. This entails a key responsibility for environmental assessment, general staff work relating to issue identification, synthesis of branch strategic outlooks, and the setting of priorities by the Committee. The Branch is also responsible for developing, in consultation with other branches, the Bureau's input into the department's annual Strategic Overview.

6. Combines Investigation Act Enforcement Support

During the period under review, a number of studies were initiated in support of the enforcement operations of the Bureau. These studies include the following:

(1) *Buying Groups*

The Branch was requested to undertake a study into the competitive implications of buying groups, a phenomenon whose incidence has increased substantially in recent years. Buying groups are organizations that purchase goods and services on behalf of a group of otherwise independent businesses. These groups have been formed among wholesalers as well as retailers and cover products ranging from groceries to automobile supplies. Some buying organizations are an extension of franchise operations, while others exist to take advantage of rebates available on pooled purchases of otherwise independent businesses. This ongoing study is intended to provide enforcement officers of the Bureau with criteria to assist in the evaluation of individual groups.

(2) *Tariffs*

Under section 28 of the Act, provision is made for the reduction or removal of customs duties by the Governor in Council where the Governor in Council is satisfied that these duties have facilitated an anticompetitive arrangement at the expense of the public. The Branch was requested to undertake a study into the application of section 28, to examine both the theoretical and empirical arguments for the increased application of the tariff remedy as an instrument of competition policy. In the first part of the study, conducted in 1983-84, past cases are reviewed and analyzed. Plans for extension of the study include examination of various types of empirical facts, data and criteria that Bureau officers can apply in using the tariff remedy.

(3) *Economics of Fines*

A study has been undertaken into the relevant factors and economic arguments considered in levying fines in Combines cases. The objective of the study is to develop a consistent set of criteria that may be applied by the Bureau and the courts in determining the appropriate magnitude of fines from a cost recovery, economic deterrent and/or punitive point of view. The study is in progress and is expected to be completed in the 1984-85 fiscal period.

(4) *Improved and Expanded Merger Statistics*

In collaboration with the Branch, the CALURA division of Statistics Canada has initiated a pilot study to assess the feasibility of compiling merger activity data on an ongoing and consistent basis. The long-term objective is to produce a biennial publication that will provide the following information in respect of merger activity in Canada:

—lists of mergers/takeovers/acquisitions;

—tables of nonconfidential characteristics of acquired and acquiring firms (SIC, country of control, etc);

—tables of economic and financial characteristics of acquired/acquiring firms (subject to confidentiality constraints);

—tables of selected financial ratios and related statistical data.

The resulting data base should be useful in monitoring both the extent and the effects of mergers in Canada.

7. Policy-related Applied Industrial Organization Studies

In addition to the studies noted above, the Branch has also undertaken a number of studies on policy-related topics in Canadian industrial organization. Most of the studies listed below are in progress.

(1) *The Determinants of Entry and Exit of Firms in Canadian Manufacturing Industries*

An important dimension of industry structure is the entry and exit of firms. This study pertaining to Canadian manufacturing industries indicates that there exist significant barriers to entry and exit confronting various types of firms. The analysis suggests that whereas profits and market growth act as incentives for new firms to enter a particular industry, factors such as economies of scale, high concentration, capital intensity, foreign control and advertising act as significant barriers or disincentives. Some of these factors also act as barriers to exit by firms. These results have important implications for the mobility of firms and the extent to which scarce economic resources can be effectively allocated among alternative competing uses, and also for the time-path of concentration levels in the Canadian manufacturing sector. Selected results of the study were presented at the 10th Annual Conference of the European Association for Research in Industrial Economics, August 23-25, 1983, Bergen, Norway.

(2) *Standards*

This study, initiated in 1983-84, is intended to examine the competition policy implications of standards and standard-setting practices and procedures used in Canada. The economic and procompetitive advantages of standards, e.g., facilitating economies of scale, diffusion of technology and information flows, are generally recognized. However, standards can also be used by firms to entrench their relative market position and further private interests. The study is expected to examine such possible instances and suggest ways and means by which the standards system can be strengthened to ensure it remains open, flexible and receptive to the demands of the marketplace.

(3) *Vertical Restraints*

The Branch has initiated a study on the economic efficiency implications of provisions of the Act relating to resale price maintenance, exclusive dealing, tied selling and other vertical restraints. In part, this is in response to the current reevaluation of policy governing these practices by antitrust authorities in the United States. The study may lead to suggestions for revisions of statutory provisions and enforcement policies regarding these practices.

(4) *Evolution of Market Structure and Competition in the Canadian Economy*

Since the early 1970s, the Canadian economy has witnessed several changes which have had an important bearing on the state of competition. Such changes include, among others, increased exposure to international trade, deregulation in the field of telecommunications and selected segments of the transportation and financial markets, passage of Stage I proposals to amend the Combines Investigation Act, and heightened levels of corporate merger activity. At the request of the Royal Commission on the Economic Union and Development Prospects for Canada (the Macdonald Commission), a paper has been prepared assessing the general impact these economic cross-currents have had on the competitive environment in which Canadian industry operates. The paper suggests that on balance there has likely been a tendency towards increased competition. This is attributable partly to increased import pressures and partly to deregulation in selected markets in Canada and the United States. Lower industry concentration levels, entry of new firms and market growth are also noted as contributing factors.

(5) *Crown Corporations*

Research is also underway on the nature and significance of Crown corporate activity in the Canadian economy, with special regard to competition policy generally and the application of the Act in particular. This research is expected to make a contribution to the work of the Economic Council of Canada on government enterprises. In addition, the Branch, in association with the Economic Council, is funding other research in this subject area. One such study pertains to the influence of Crown ownership and regulation on the performance of the Canadian airline industry.

(6) *Non-Tariff Barriers and Regulatory Conflicts in Canada-U.S. Trade*

A study has been initiated on non-tariff barriers and regulatory conflicts in Canada-U.S. trade. Canada's exports and imports of goods and services to and from the United States represent approximately 70 per cent of total Canadian foreign trade. In recent years this vital aspect of the Canadian economy has been increasingly affected by U.S. "safeguard," antidumping and countervailing duty actions, and by differences between the two countries' regulatory environments. The Branch study is intended to assess the implications of possible sectoral free trade arrangements from the competition policy perspective and will also consider important underlying issues of industrial rationalization and regulatory harmonization.

8. Other Matters

Branch staff members also assisted in the preparation of submissions by the Director to regulatory boards, administrative tribunals and House of Commons Standing Committees. These included interventions before the Canadian Radio-television and Telecommunications Commission in the matter of the Bell Canada Cost Inquiry, the House of Commons Standing Committee on Transportation in its review of airline policy for Canada and in a number of Canadian Transport Commission hearings on air fare deregulation and entry by new companies in the courier business in Canada. In addition, the Branch assisted the Minister's and Deputy Minister's office in the preparation of policy analysis and background papers on the Corporate Shareholding Limitation Act and the proposed Daily Newspaper Act.

APPENDIX I

Reports by RTPC and Action Taken Thereon*

Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which Recommendations Applied**	Actions Taken on Recommendations and Results***
Telecommunications in Canada—Phase I, Interconnection	General Inquiry under section 47 of Combines Investigation Act	September 10, 1981	The recommendations and conclusions of the RTPC are set out in the 1982 Annual Report at pages 92-95.	Bell Canada, British Columbia Telephone Company, CNCP Telecommunications and other telecommunications carriers.	To date the Director has filed the RTPC Report with the CRTC, the Alberta Public Utilities Board and the Ontario Telephone Service Commission, which bodies have held public hearings into the matter of terminal attachment. The Director urged that these regulatory bodies accommodate, as part of their decisions on this issue, the principal recommendations of the RTPC.
Part II—The Proposed Reorganization of Bell Canada	General Inquiry under section 47 of the Combines Investigation Act	July 26, 1982	The RTPC recommended that the reorganization of the Bell Group of Companies should not proceed until there was full public consideration of the effects of the proposal on subscribers and the telecommunication industry.	Bell Canada and Northern Telecom Limited.	The Governor in Council directed the CRTC to review the proposed reorganization of Bell Canada, setting forth a number of possible effects to be examined in detail. The CRTC held public hearings on a variety of issues relating to the reorganization and its effects. The Director intervened and presented witnesses to address the issues of: (1) cross-subsidization within the Bell group, (2) statutory limitations in Bell Canada's Special Act, (3) structural separation from Bell Canada of various competitive activities, and (4) resource transfers within the Bell group.

The CRTC issued its report on April 18, 1983, which recommended legislative action to correct possible problems affecting Bell's telephone subscribers. The legislative changes concerned: (1) production of documents from Bell and its affiliates relevant to the CRTC's mandate; (2) empowering the CRTC to order separate subsidiaries for competitive activities; (3) empowering the CRTC to order a minority shareholding in Bell Canada; (4) reconfirming Bell's sole role as a common carrier; and (5) prohibiting Bell and its group from holding a broadcasting license.

These recommendations reflected the principal submissions of the Director's intervention.

Subsequent to the publication of the CRTC's report, the Minister of Communications announced that the Government had accepted the CRTC's recommendations and would act quickly to introduce the necessary legislation.

Representatives of the Director, of the CRTC and of the Department of Communications and Justice participated in the preparation of the proposed legislation. On February 4, 1984, the Bell Canada Reorganization Act received First Reading in the House of Commons as Part I of Bill C-20. As of March 31, 1984, Bill C-20 was awaiting Second Reading.

APPENDIX I — (Continued)

Reports by RTPC and Action Taken Thereon*

Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which Recommendations Applied**	Actions Taken on Recommendations and Results***
Part III—The Impact of Vertical Integration on the Equipment Industry.	General Inquiry under section 47 of the Combines Investigation Act	January 7, 1983	The recommendations are as follows: (1) Northern should be required to continue to sell to Bell at prices no higher than those offered to other Canadian customers in order to protect competing Canadian suppliers from possible predatory pricing and to protect Bell subscribers, somewhat, against prices higher than those paid by other Canadian telephone companies; (2) The CRTC should require Bell and B.C. Tel to provide reports on prices of selected equipment that these companies pay to their affiliated suppliers and those that are available from other suppliers in Canada and the United States. The exact information required should be determined by the CRTC in order that it can assure itself that the ownership links with equipment suppliers do not disadvantage subscribers; (3) B.C. Tel should continue its procurement through the competitive bidding process, and Bell should show itself more receptive to innovations developed in Canada by non-affiliated companies;	Bell Canada, Northern Telecom Limited and Bell Northern Research Ltd., and British Columbia Telephone Company and AEL Microtel Limited	To date no action has been commenced.

			(4) To better understand the causes of different telephone company tariffs and to deal with concerns of monopoly services of telephone companies cross-subsidizing competitive services, provincial regulatory bodies and the CRTC should develop a uniform system of cost accounting; and (5) Should the CRTC conclude that, as a result of vertical integration, excessive equipment costs are being borne by subscribers, the Government should issue guidelines covering any national goals which nevertheless might best be achieved by vertical integration.		

* An Appendix in this form was first included in the Report of the Director of Investigation and Research for the year ended March 31, 1961, and contained all reports received from the Restrictive Trade Practices Commission since July 1, 1957.

** In many cases the reports do not specifically name persons or companies to which the recommendations apply. Unless, therefore, the recommendations in the report are stated specifically to apply to named persons or companies, nothing is shown under this heading.

*** The reports of the Restrictive Trade Practices Commission do not contain recommendations in respect of prosecution proceedings, apart from tariff action. Any action under the Act arising out of alleged contraventions of the anticombines legislation can be taken only through the courts. The comments under this heading, therefore, set out not only the consultative activities taken by the Director but also, where applicable, any court proceedings contemplated or commenced and the outcome of such proceedings.

APPENDIX II

Proceedings Completed in Cases Referred to the Attorney General of Canada Direct

Part I - Proceedings under sections 32 to 35 and section 38 of the Act

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Price maintenance (Men's shirts)	Cluett, Peabody Canada Inc.	Three charges were laid under paragraph 38(1)(a) and one charge was laid under paragraph 38(1)(b) at Toronto, Ontario, on March 16, 1981. On May 6, 1982, the accused was acquitted on two of the charges under paragraph 38(1)(a) but was convicted on the other charge under paragraph 38(1)(a) and the charge under paragraph 38(1)(b). On June 3, 1982, the accused was fined $10,000 on each charge for a total fine of $20,000. The accused appealed the decision but, on April 29, 1983, the appeal was dismissed.
Price maintenance (Furniture)	Canadian Union College carrying on business as Parkland Furniture Mfg. and H. Jacobson	One charge under paragraph 38(1)(a) and one charge under paragraph 38(1)(b) were laid at Lacombe, Alberta, on November 27, 1981. The charge under paragraph 38(1)(a) was withdrawn at the preliminary hearing on May 12, 1983. At the trial on the remaining charge the accused were acquitted.
Price maintenance (C.B. antenna)	Durex Marketing Corporation	Eight charges were laid under section 38 at Ottawa, Ontario, on December 23, 1979. On May 31, 1982, a stay of proceedings was entered by the Crown and on May 31, 1983, the stay was allowed to expire.
Price maintenance (Footwear)	Brown Shoe Company of Canada Limited	Thirteen charges under section 38 were laid at Perth, Ontario, on November 26, 1981. One charge was withdrawn by the Crown at the preliminary hearing and, on July 9, 1982, the accused was discharged on the remaining 12 charges. On February 2, 1983, an application by the Attorney General for the written consent of a judge in the preferring of an indictment was dismissed. A subsequent application for a preferred indictment was dismissed by the Supreme Court of Ontario on June 15, 1983.
Price maintenance (Stereo components)	BSR (Canada) Ltée/Ltd.	One charge under paragraph 38(1)(b) was laid at Toronto, Ontario, on March 9, 1982. On July 26, 1983, the accused pleaded guilty and was convicted and fined $7,500.
Price maintenance (Men's clothing)	W.S. (Bud) Hardy Agency Ltd.	Two charges were laid under paragraph 38(1)(b) at Saskatoon, Saskatchewan, on May 27, 1983. On September 13, 1983, the company pleaded guilty and was convicted and fined $500 on each charge for a total fine of $1,000.

APPENDIX II — (Continued)

Part I - Proceedings under sections 32 to 35 and section 38 of the Act

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Bid-rigging (Heating equipment)	R.L. Thorpe Sales Ltd., Mark Hot Inc., 67353 Alberta Ltd. (formerly Dunham Sales Ltd.), Dunham-Bush of Canada Limited and Trane Company of Canada Limited	Seven charges were laid under section 32.2 at Edmonton, Alberta, on February 7, 1983. On June 6, 1983, R.L. Thorpe Sales, 67353 Alberta Ltd. and Mark Hot Inc. pleaded guilty to all the charges and were convicted and each fined $250 on each charge. The charges against the two remaining accused were withdrawn. The Crown appealed the fines and, on September 15, 1983, the Alberta Court of Appeal increased the fine to $1,000 on each charge for a total fine of $21,000.
Price maintenance (Televisions and video cassette recorders)	R.C.A. Inc.	Four charges under paragraph 38(1)(a) and two charges under paragraph 38(1)(b) were laid at Edmonton, Alberta, on June 21, 1982. At the preliminary hearing in December 1982, two of the charges under paragraph 38(1)(a) and one of the charges under paragraph 38(1)(b) were withdrawn. On September 22, 1983, the accused pleaded guilty to one charge under paragraph 38(1)(a) and was convicted and fined $5,000. The remaining charges were withdrawn.
Price maintenance (Automobile radio equipment)	Autostock Inc.	Two charges were laid under section 38 at Montréal, Québec, on February 26, 1982. The Information was subsequently relaid in November 1982. On October 6, 1983, the accused was acquitted.
Price maintenance (Women's wear)	Daymor Dress (Canada) Inc.	One charge was laid under each of paragraphs 38(1)(a) and 38(1)(b) at Montréal, Québec, on June 13, 1983. On October 28, 1983, the company was convicted and fined $3,000 on each charge for a total fine of $6,000.
Price maintenance (Furniture)	Sklar Furniture Limited	One charge was laid under each of paragraphs 38(1)(a) and 38(1)(b) at Ottawa, Ontario, on April 2, 1982. On November 3, 1982, the accused was discharged on the charge under paragraph 38(1)(a). On November 9, 1983, the accused was convicted on the charge under paragraph 38(1)(b) and fined $3,000.
Price maintenance (Waterbeds)	Andico Manufacturing Limited and International Waterbed Distributors Ltd.	One charge was laid under each of paragraphs 38(1)(a) and 38(1)(b) at Winnipeg, Manitoba, on October 22, 1982, against Andico Manufacturing. An additional charge was laid under paragraph 38(1)(b) against International Waterbed. On November 17, 1983, Andico was convicted and, on November 22, 1983, was fined $1,000 on the charge under paragraph 38(1)(a) and $10,000 on the charge under paragraph 38(1)(b). On November 24, 1983, International was convicted on the charge under paragraph 38(1)(b) and, on December 2, 1983, was fined $7,000.

APPENDIX II — (Continued)

Part I - Proceedings under sections 32 to 35 and section 38 of the Act

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Combination (Uranium marketing)	Denison Mines Ltd., Eldorado Nuclear Ltd./ Eldorado Nucléaire Limitée, Gulf Minerals Canada Ltd./Minéraux Gulf du Canada Limitée, Rio Algom Limited, Uranerz Canada Ltd., Uranium Canada Ltd./Uranium Canada Limitée	One charge was laid under paragraph 32(1)(c) at Toronto, Ontario, on July 7, 1981. Eldorado Nuclear and Uranium Canada sought a Writ of Prohibition to prohibit the Provincial Court from proceeding with the preliminary hearing on the grounds of Crown immunity. On April 23, 1982, the Supreme Court of Ontario granted the writ, and the decision was upheld by the Court of Appeal on June 11, 1982. Leave to appeal to the Supreme Court of Canada was granted and that Court, on December 15, 1983, upheld the immunity rulings of the lower courts. A stay of proceedings was entered against the remaining accused on December 22, 1983.
Combination (Transportation of household goods)	Allied Van Lines Limited, United Van Lines (Canada) Ltd. (formerly Missouri United Van Lines Limited), North American Van Lines Canada Ltd., Aero Mayflower Transit Co. Ltd., Atlas Van Lines (Canada) Ltd., Canadian Warehousing Association, Canadian Household Goods Carriers' Tariff Bureau Association	One charge was laid under paragraph 32(1)(c) at Toronto, Ontario, on February 20, 1980. On December 14, 1983, the van lines and the Tariff Bureau pleaded guilty and were convicted and fined a total of $250,000. An Order of Prohibition was also issued. The charge against Canadian Warehousing Association was withdrawn.
Price maintenance (Mattresses and box springs)	Sealy Eastern Limited and Sealy Canada Ltd./Ltée	Three charges were laid under the former subsection 38(2) and one charge was laid under the former subsection 38(3) at Toronto, Ontario, on February 24, 1982. On January 13, 1983, the proceedings were stayed and, on January 13, 1984, the stay expired.
Price maintenance (Perfumes and toiletries)	MEM Company (Canada) Limited	One charge was laid under each of paragraphs 38(1)(a) and 38(1)(b) at London, Ontario, on January 21, 1983. On January 17, 1984, the accused was acquitted.
Price maintenance (Rental accommodation)	Alan D. Schelew, Irving Schelew, Pine Park Realty Ltd., Bram Enterprises Ltd., J.S. Management & Consultants Ltd., Moncton & District Landlords Association Inc., Alyre J. Boucher, Keith Richardson, Jamb Enterprises Ltd., Moncton Family Outfitters Ltd., A-1 Enterprises Ltd.	One charge was laid under paragraph 38(1)(a) at Moncton, New Brunswick, on November 9, 1979. All the accused except Keith Richardson and Pine Park Realty were ordered to stand trial. On February 15, 1982, the accused were acquitted. An appeal was filed by the Crown on March 5, 1982, but on January 17, 1984, was dismissed by the Court of Appeal of New Brunswick.

APPENDIX II — (Continued)

Part I - Proceedings under sections 32 to 35 and section 38 of the Act

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Price maintenance (Jeans)	Savroche Enterprises Inc. and David Tenenbaum	Three charges were laid under paragraph 38(1)(a) and eight charges were laid under paragraph 38(1)(b) at Montréal, Québec, on March 29, 1983, against the corporate accused. An additional charge was laid against the individual under paragraph 38(1)(b). At the start of the preliminary hearing one of the charges against the corporate accused was withdrawn. At the conclusion of the hearing the company pleaded guilty to the remaining charges and the individual to the one charge. The corporate accused was convicted and fined a total of $25,000, and the individual was granted an absolute discharge. The Crown appealed the disposition and, on February 1, 1984, the Québec Court of Appeal increased the corporate fine to $50,000 and convicted the individual and imposed a fine of $5,000.
Price maintenance (Stereo components)	Ravel Enterprises Limited carrying on business under the name and style S.H. Parker Company	Two charges were laid under the former subsections 38(2) and (3) at Toronto, Ontario, on February 6, 1976. On December 22, 1977, the accused was convicted and fined $25,000 on the charge under subsection 38(2) and $5,000 on the other charge. The accused appealed the decision but, on February 23, 1984, the appeal was abandoned.
Price maintenance (Embroidery supplies)	Canadian Bunka Embroidery Co. Ltd.	Proceedings under subsection 30(2) for an Order of Prohibition were instituted in the Supreme Court of Ontario. On February 17, 1984, the order was granted by the Court.
Combination, merger and monopoly (Newspapers)	Thomson Newspapers Limited, F.P. Publications Limited, Southam Inc.	Seven charges were laid under sections 32 and 33 at Toronto, Ontario, on May 1, 1981. Following the preliminary hearing in May 1982 an indictment was preferred containing eight charges. On October 28, 1983, on a motion for a directed verdict of not guilty, the accused were acquitted on five of the charges. On December 9, 1983, the accused were acquitted on the three remaining charges. A notice of appeal was filed by the Crown but was abandoned on February 28, 1984.
Impeding an inquiry (Newspapers)	William J. Carradine	One charge was laid under subsection 41(1) at Toronto, Ontario, on May 1, 1981. On January 9, 1984, the Crown entered a stay of proceedings.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Sale above advertised price (Hardware items)	G.H. Berger Ltée (St-Jean, Québec)	Six charges were laid on March 2, 1983, under section 37.1. On April 7, 1983, the accused pleaded guilty and was convicted and fined $100 on each charge for a total fine of $600.
False or misleading representation in a material respect (Storm windows)	Atlantic Airseal Ltd. (Fredericton, New Brunswick)	Two charges were laid on January 26, 1983, under paragraph 36(1)(a). On April 8, 1983, the accused was tried in absentia, and was convicted and fined $5,000 on each charge for a total fine of $10,000.
False or misleading representation in a material respect (Coin sorter and feeder)	Samson Equipement de Bureau Inc. (Edmonton, Alberta)	One charge was laid on February 17, 1982, under paragraph 36(1)(a). On April 8, 1983, the accused pleaded guilty and was convicted and fined $500.
False or misleading representation in a material respect (Bus tours)	Music Mann Tours Limited carrying on business as Music Mann (London, Ontario)	One charge was laid on February 18, 1982, under paragraph 36(1)(a). The accused pleaded not guilty but, on April 12, 1983, was convicted and fined $3,000.
Sale above advertised price (Watches)	Metropolitan Stores (MTS) Ltd., Les Magasins Metropolitains (MTS) Ltée (Sydney, Nova Scotia)	One charge was laid on November 17, 1982, under section 37.1. On April 13, 1983, the accused pleaded guilty and was convicted and fined $4,000.
Sale above advertised price (Hardware items)	Lortie & Martin Ltée (Ste-Agathe des Monts, Québec)	Five charges were laid on December 20, 1982, under section 37.1. On April 15, 1983, the accused pleaded guilty and was convicted and fined $100 on each charge for a total fine of $500.
Sale above advertised price (Hardware items)	Odilon Côté Inc. (Beaupré, Québec)	Seven charges were laid on February 15, 1983, under section 37.1. On April 15, 1983, the accused pleaded guilty and was convicted and fined $75 on each charge for a total fine of $525.
Sale above advertised price (Automobiles)	460998 Ontario Limited carrying on business as Royal City Chrysler Plymouth (Kitchener, Ontario)	Nine charges were laid on February 24, 1983, under section 37.1. On April 18, 1983, the accused pleaded guilty to five charges and was convicted and fined $800 on each charge for a total fine of $4,000. The remaining charges were withdrawn.
False or misleading representation in a material respect (Clothing)	Maynard's Auctioneers Ltd. (Vancouver, British Columbia)	Two charges were laid on November 26, 1982, under paragraph 36(1)(a). On April 19, 1983, the charges were dismissed.
Sale above advertised price (Hardware items)	Centre de Matériaux Boivin Inc. (Baie St-Paul, Québec)	Eight charges were laid on February 15, 1983, under section 37.1. On April 21, 1983, the accused pleaded guilty and was convicted and fined $100 on each charge for a total fine of $800.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Sale above advertised price (Hardware items)	Matériaux P.H. Légaré Inc. carrying on business as Quincaillerie P.H. Légaré & Fils Enr. and Véronique Lafond (Stoneham, Québec)	Five charges were laid on January 26, 1983, under section 37.1 against Véronique Lafond. On March 11, 1983, those charges were withdrawn. On March 10, 1983, five charges were laid under section 37.1 against Matériaux P.H. Légaré Inc. On April 22, 1983, Matériaux P.H. Légaré Inc. pleaded guilty and was convicted and fined $100 on each charge for a total fine of $500.
Sale above advertised price (Hardware items)	François Dion Inc. (St-Raymond, Québec)	Seven charges were laid on February 15, 1983, under section 37.1. On April 22, 1983, the accused pleaded guilty and was convicted and fined $75 on each charge for a total fine of $525.
False or misleading representation in a material respect (Gas-saving seminar)	Millage Illimité Inc. (Victoriaville, Québec)	Three charges were laid on September 8, 1982, under paragraph 36(1)(a). On April 25, 1983, the accused pleaded guilty and was convicted and fined $200 on each charge for a total fine of $600.
Misleading price representation (Sundry items)	Les Liquidations Gemma Inc. (Sydney, Nova Scotia)	Three charges were laid on April 13, 1983, under paragraph 36(1)(d). On April 27, 1983, the accused pleaded guilty and was convicted and fined $900 on each charge for a total fine of $2,700.
Representation without proper test (Hearing aids)	Earl Sidney Hauser carrying on business as Ex-Cell Hearing Centre (Regina, Saskatchewan)	One charge was laid on November 8, 1982, under paragraph 36(1)(b). The accused pleaded not guilty but, on May 2, 1983, was found guilty and granted a conditional discharge.
False or misleading representation in a material respect (Hearing aids)	Earl Sidney Hauser carrying on business as Ex-Cell Hearing Centre (Regina, Saskatchewan)	One charge was laid on November 8, 1982, under paragraph 36(1)(a). The accused pleaded not guilty but, on May 2, 1983, was found guilty and granted a conditional discharge.
False or misleading representation in a material respect (Houses)	Corporation Immobilière Côte St. Luc Inc and Les Développements Buckport Inc. (St-Bruno, Québec)	Three charges were laid on March 9, 1981, under paragraph 36(1)(a). On October 18, 1982, the accused were acquitted. The Crown appealed the acquittal and, on February 25, 1983, the appeal was allowed and the accused were convicted. On May 2, 1983, each accused was fined $250 on each charge for a total fine of $1,500.
False or misleading representation in a material respect (Real estate)	Canada Homes Inc. (Toronto, Ontario)	Five charges were laid on February 15, 1982, under paragraph 36(1)(a). On May 3, 1983, the accused pleaded guilty to two charges and was convicted and fined $1,000 on each charge for a total fine of $2,000. The remaining charges were dismissed.
False or misleading representation in a material respect (Apartment rentals)	Les Constructions Robert Bernard Inc. (St-Georges de Beauce, Québec)	Twenty-one charges were laid on March 17, 1983, under paragraph 36(1)(a). On May 16, 1983, the accused pleaded guilty to 13 charges and was convicted and fined $300 on one charge and $100 on each of 12 charges for a total fine of $1,500. The remaining charges were dismissed.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Diamond earrings)	H.M.F. Minerals Ltd. and Ralph Zacks (Toronto and Whitby, Ontario)	Three charges were laid on September 22, 1982, under paragraph 36(1)(a). On April 27, 1983, the corporate accused pleaded guilty to one charge and was convicted and fined $15,000. On May 9, 1983, the remaining charges against the corporate accused and all charges against the individual were withdrawn.
False or misleading representation in a material respect (Slimming devices)	Media Mail Order Inc. (St. John's, Newfoundland)	One charge was laid on August 16, 1982, under paragraph 36(1)(a). On May 9, 1983, the charge was withdrawn.
False or misleading representation in a material respect (Metal products)	Dobney Foundry Ltd. (Vancouver, British Columbia)	Two charges were laid on September 10, 1982, under paragraph 36(1)(a). On May 10, 1983, the charges were dismissed.
Sale above advertised price (Hardware items)	Quincaillerie Morency Inc. (Québec, Québec)	Eight charges were laid on January 26, 1983, under section 37.1. The accused pleaded not guilty but, on May 13, 1983, was convicted on seven charges and fined $100 on each of four charges and $75 on each of three charges for a total fine of $625. The remaining charge was dismissed.
False or misleading representation in a material respect (Insulated airpots)	K-Mart Canada Limited/ K-Mart Canada Limitée carrying on business as K-Mart (Dartmouth, Nova Scotia)	Two charges were laid on October 6, 1982, under paragraph 36(1)(a). The accused pleaded not guilty but, on May 13, 1983, was convicted on one charge and fined $2,000. The remaining charge was dismissed.
False or misleading representation in a material respect (Gas-saving seminar)	Millage Illimité Inc. and Guy Sasseville (Sherbrooke, Québec)	Three charges were laid on September 13, 1982, under paragraph 36(1)(a). On March 21, 1983, the accused pleaded guilty and were convicted. The corporate accused was fined $200 on each charge and, on May 16, 1983, the individual was fined $50 on each charge for a total fine of $750.
Non-availability (Camping equipment)	Zellers Inc. (Winnipeg, Manitoba)	Nine charges were laid on November 24, 1982, under section 37. On May 13, 1983, one new charge was laid under section 37 and the nine charges were withdrawn. On May 16, 1983, the accused pleaded guilty and was convicted and fined $1,100.
False or misleading representation in a material respect (Audio equipment)	Audiotrend Ltd. carrying on business as Audio-Video Liquidators of Canada, and David Tsai and Lindsay Lipton (Toronto, Ontario)	One charge was laid on April 19, 1983, under paragraph 36(1)(a). On May 18, 1983, the corporate accused pleaded guilty and was convicted and fined $20,000. The charges against the individuals were withdrawn.
Sale above advertised price (Health and personal care products)	Gilles Beaulieu and Les Produits de Santé Beaulieu (Giffard, Québec)	Twelve charges were laid on March 17, 1982, under section 37.1 against the corporate accused. On July 23, 1982, a motion for non-suit was allowed and the charges were dismissed. On August 10, 1982, twelve charges were laid against the individual. On May 20, 1983, the individual pleaded guilty and was convicted and fined $75 on each charge for a total of fine $900.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Gas-saving seminar)	Millage Illimité Inc. and Guy Sauveville (Brossard, Québec)	Three charges were laid on August 26, 1982, under paragraph 36(1)(a). Both accused pleaded not guilty but, on March 15, 1983, the individual was convicted and fined $300 concurrently on each charge for a total fine of $300. The charges against the corporate accused were dismissed on May 20, 1983.
False or misleading representation in a material respect (Men's clothing)	Manufacture d'habits Hull Inc. (Pointe Gatineau, Québec)	One charge was laid on November 26, 1982, under paragraph 36(1)(a). The accused pleaded not guilty but, on May 25, 1983, was convicted and fined $1,000.
False or misleading representation in a material respect (Weight loss treatment and personal care products)	The Great Shape-Up Inch Loss Centre Inc. carrying on business as The Great Shape-Up and Alexander Wayne Traikovich (London, Stratford and Waterloo, Ontario)	Three charges were laid on December 24, 1982, under paragraph 36(1)(a). On January 5, 1983, the Information was amended and the three charges were relaid. On May 25, 1983, the corporate accused pleaded guilty to one charge and was convicted and fined $7,500. A Prohibition Order was issued. The remaining charges against the corporate accused and all charges against the individual were withdrawn.
Representation without proper test (Weight loss treatment and personal care products)	The Great Shape-Up Inch Loss Centre Inc. carrying on business as The Great Shape-Up and Alexander Wayne Traikovich (London, Stratford and Waterloo, Ontario)	Three charges were laid on December 24, 1982, under paragraph 36(1)(b). On January 5, 1983, the Information was amended and two charges were relaid. On May 25, 1983, the charges were withdrawn.
False or misleading representation in a material respect (Jewellery)	Sun Craft Treasures Limited carrying on business as The Gold Mine (Dartmouth, Nova Scotia)	One charge was laid on November 29, 1982, under paragraph 36(1)(a). On May 27, 1983, the charge was dismissed.
Misleading price representation (Jewellery)	Sun Craft Treasures Limited carrying on business as The Gold Mine (Dartmouth, Nova Scotia)	One charge was laid on November 29, 1982, under paragraph 36(1)(d). On May 27, 1983, the accused pleaded not guilty but was convicted and fined $1,000.
False or misleading representation in a material respect (Gas-saving device)	Ronaldo Tremblay carrying on business as Machinerie 755 Enr. (Cap-de-la-Madeleine, Québec)	One charge was laid on July 14, 1982, under paragraph 36(1)(a). The accused pleaded not guilty but, on May 27, 1983, was convicted and fined $150.
Representation without proper test (Gas-saving device)	Ronaldo Tremblay carrying on business as Machinerie 755 Enr. (Cap-de-la-Madeleine, Québec)	One charge was laid on July 14, 1982, under paragraph 36(1)(b). The accused pleaded not guilty but, on May 27, 1983, was convicted and fined $150.
False or misleading representation in a material respect (Awnings)	William Morris & Sons Limited (Montréal, Québec)	One charge was laid on April 28, 1983, under paragraph 36(1)(a). On May 31, 1983, the accused pleaded guilty and was convicted and fined $250.
Misleading price representation (Awnings)	William Morris & Sons Limited (Montréal, Québec)	One charge was laid on April 28, 1983, under paragraph 36(1)(d). On May 31, 1983, the accused pleaded guilty and was convicted and fined $250.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Gas-saving seminar)	Millage Illimité Inc. and Guy Sauseville (Trois-Rivières and Cap-de-la-Madeleine, Québec)	Three charges were laid on March 12, 1982, under paragraph 36(1)(a). Both accused pleaded not guilty but, on May 2, 1983, the individual was convicted and fined $100 on each charge for a total fine of $300. On May 31, 1983, the charges against the corporate accused were dismissed.
Sale above advertised price (Hardware items)	Quincaillerie Donnacona Ltée (Donnacona, Québec)	Six charges were laid on February 15, 1983, under section 37.1. On June 3, 1983, the accused pleaded guilty and was convicted and fined $75 on each charge for a total fine of $450.
Pyramid selling (Business opportunity kits)	Felix J. Ibay carrying on business as Business Success Enterprise (Toronto, Ontario)	One charge was laid under section 36.3. On June 8, 1983, the accused pleaded guilty and was given a conditional discharge with a six-month probation term and a condition to make restitution.
False or misleading representation in a material respect (Gold jewellery)	Crown Gems Limited (Dartmouth, Nova Scotia)	Two charges were laid on February 11, 1983, under paragraph 36(1)(a). On June 9, 1983, the charges were dismissed.
Misleading price representation (Gold jewellery)	Crown Gems Limited (Dartmouth, Nova Scotia)	Two charges were laid on February 11, 1983, under paragraph 36(1)(d). On June 9, 1983, the accused pleaded guilty to one charge and was convicted and fined $1,000. The remaining charge was dismissed.
False or misleading representation in a material respect (Jewellery)	G.B. Murphy Limited carrying on business as G.B. Murphy Jewellers and Wasson Investments Limited (Dartmouth, Nova Scotia)	One charge was laid on November 29, 1982, under paragraph 36(1)(a) against G.B. Murphy. On April 15, 1983, the charge was dismissed and a charge was laid against Wasson Investments. On June 9, 1983, the charge was dismissed.
Misleading price representation (Jewellery)	G.B. Murphy Limited carrying on business as G.B. Murphy Jewellers and Wasson Investments Limited (Dartmouth, Nova Scotia)	One charge was laid on November 29, 1982, under paragraph 36(1)(d) against G.B. Murphy. On April 15, 1983, the charge was dismissed and a charge was laid against Wasson Investments. On June 9, 1983, Wasson Investments pleaded guilty and was convicted and fined $1,000.
False or misleading representation in a material respect (Gas-saving device)	Fuel-O-Matic Manufacturing (Eastern) Limited and Kenneth Graydon (Tillsonburg, Ontario)	One charge was laid on September 17, 1982, under paragraph 36(1)(a). On June 9, 1983, the accused were acquitted.
False or misleading representation in a material respect (Gas-saving device)	Donald J. Graydon carrying on business as Doo-Em Products (Tillsonburg, Ontario)	One charge was laid on September 17, 1982, under paragraph 36(1)(a). On June 9, 1983, the accused was acquitted.
Sale above advertised price (Hardware items)	Ferlac Inc. (Roberval, Québec)	Seven charges were laid on February 21, 1983, under section 37.1. On June 13, 1983, the accused pleaded guilty and was convicted and fined $100 on each charge for a total fine of $700.
False or misleading representation in a material respect (Gas-saving device)	Jean Auclair (Sherbrooke, Québec)	One charge was laid on September 13, 1982, under paragraph 36(1)(a). On June 13, 1983, the accused pleaded guilty and was convicted and fined $250.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Representation without proper test (Gas-saving device)	Jean Auclair (Sherbrooke, Québec)	One charge was laid on September 13, 1982, under paragraph 36(1)(b). On June 13, 1983, the accused pleaded guilty and was convicted and fined $250.
False or misleading representation in a material respect (Jewellery)	Maritime Jewellery Retail Limited carrying on business as The Gold Factory (Dartmouth, Nova Scotia)	One charge was laid on November 29, 1982, under paragraph 36(1)(a). On June 13, 1983, the charge was dismissed.
Misleading price representation (Jewellery)	Maritime Jewellery Retail Limited carrying on business as The Gold Factory (Dartmouth, Nova Scotia)	One charge was laid on November 29, 1982, under paragraph 36(1)(d). On June 13, 1983, the charge was dismissed.
False or misleading representation in a material respect (Jewellery)	Charm Jewellery Limited (Dartmouth, Nova Scotia)	One charge was laid on November 29, 1982, under paragraph 36(1)(a). On June 13, 1983, the accused pleaded guilty and was convicted and fined $1,000.
Misleading price representation (Jewellery)	Charm Jewellery Limited (Dartmouth, Nova Scotia)	One charge was laid on November 29, 1982, under paragraph 36(1)(d). On June 13, 1983, the charge was dismissed.
False or misleading representation in a material respect (Plans for constructing a carburetor)	George Wright carrying on business as Carburetor Research (Kelowna, British Columbia)	One charge was laid on August 26, 1982, under paragraph 36(1)(a). The accused pleaded not guilty but, on March 25, 1983, was found guilty and granted an absolute discharge. The Crown appealed the discharge but, on June 16, 1983, the appeal was abandoned.
Representation without proper test (Plans for constructing a carburetor)	George Wright carrying on business as Carburetor Research (Kelowna, British Columbia)	One charge was laid on August 26, 1982, under paragraph 36(1)(b). The accused pleaded not guilty but, on March 25, 1983, was found guilty and granted an absolute discharge. The Crown appealed the discharge but, on June 16, 1983, the appeal was abandoned.
Misleading price representation (Video recorder)	W & L Enterprises Ltd. (Fredericton, New Brunswick)	Two charges were laid on April 18, 1983, under paragraph 36(1)(d). The accused pleaded guilty and was convicted on June 20, 1983, and fined $150 on each charge for a total fine of $300.
Sale above advertised price (Hardware items)	Réal Gendron Inc. (Salaberry de Valleyfield, Québec)	Six charges were laid on February 18, 1983, under section 37.1. On June 20, 1983, the accused pleaded guilty and was convicted and fined $50 on each charge for a total fine of $300.
False or misleading representation in a material respect (Children's furniture)	Babee Tenda Québec Inc. (Montréal, Québec)	One charge was laid on April 29, 1983, under paragraph 36(1)(a). On June 21, 1983, the accused pleaded guilty and was convicted and fined $250.
Promotional contest (Children's furniture)	Babee Tenda Québec Inc. (Montréal, Québec)	One charge was laid on April 29, 1983, under section 37.2. On June 21, 1983, the accused pleaded guilty and was convicted and fined $250.
False or misleading representation in a material respect (Mortar)	North American Mortar Supply Inc. (Edmonton, Alberta)	Two charges were laid on September 10, 1982, under paragraph 36(1)(a). On June 23, 1983, the charges were dismissed.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Sheepskin and leather garments)	The Young Manufacturer Inc. carrying on business as both Toronto Leather Fashions and Woolskins and Michael Goldgrub (Toronto, Ontario)	Thirty-four charges were laid on September 17, 1982, under paragraph 36(1)(a). On June 27, 1983, the corporate accused pleaded guilty to six charges and was convicted and fined $5,000 on each charge for a total fine of $30,000. The remaining charges against the corporate accused and all charges against the individual were withdrawn.
False or misleading representation in a material respect (Gold chains)	London Jewellers Limited (Sydney, Nova Scotia)	Twenty-three charges were laid on April 13, 1983, under paragraph 36(1)(a). On June 22, 1983, the accused pleaded guilty to three charges and was convicted and, on June 28, 1983, was fined $3,000 on each charge for a total fine of $9,000. The remaining charges were withdrawn.
Misleading price representation (Gold chains)	London Jewellers Limited (Sydney, Nova Scotia)	Three charges were laid on April 13, 1983, under paragraph 36(1)(d). On June 22, 1983, the accused pleaded guilty to two charges and was convicted and, on June 28, 1983, was fined $3,000 on each charge for a total fine of $6,000. The remaining charge was withdrawn.
Misleading price representation (Gold chains)	Charm Jewelry Limited (Truro, Nova Scotia)	Three charges were laid on April 26, 1983, under paragraph 36(1)(d). On June 29, 1983, the charges were dismissed.
False or misleading representation in a material respect (Gold chains)	Gail's Holdings Limited carrying on business as Lynn's Jewelry (Truro, Nova Scotia)	One charge was laid on April 26, 1983, under paragraph 36(1)(a). On June 29, 1983, the accused pleaded guilty and was convicted and fined $1,000.
Misleading price representation (Gold chains)	Gail's Holdings Limited carrying on business as Lynn's Jewelry (Truro, Nova Scotia)	One charge was laid on April 26, 1983, under paragraph 36(1)(d). On June 29, 1983, the charge was dismissed.
False or misleading representation in a material respect (Wallpaper)	Color Your World Inc. and J.B. Templeton Limited carrying on business as Color Your World (St. John's, Newfoundland)	Four charges were laid on December 11, 1981, under paragraph 36(1)(a). Each accused was solely charged with respect to two charges. Color Your World Inc. pleaded not guilty but, on September 24, 1982, was convicted and fined $300 on each charge for a total fine of $600. The accused appealed the conviction but, on February 10, 1983, the appeal was abandoned. The charges against J.B. Templeton Limited were withdrawn on June 30, 1983.
Misleading price representation (Gas barbecue)	Sunbeam Corporation (Canada) Limited (Montréal, Québec)	One charge was laid on April 25, 1983, under paragraph 36(1)(d). On July 11, 1983, the accused pleaded guilty and was convicted and fined $500.
Misleading price representation (Purses)	French Shoes (1979) Inc. and Associations des Marchands Detaillants de Place Bonaventure (Montréal, Québec)	One charge was laid on April 11, 1983, under paragraph 36(1)(d). On July 15, 1983, French Shoes (1979) Inc. pleaded guilty and was convicted and fined $750. The charge against the other accused was withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Waterbeds)	Waterbed World Limited and Stuart Spoerin Stevens (London, Ontario)	Two charges were laid on November 10, 1982, under paragraph 36(1)(a). On July 18, 1983, the individual pleaded guilty to one charge and was convicted and fined $800. The remaining charge against the individual and both charges against the company were withdrawn.
Misleading price representation (Waterbeds)	Waterbed World Limited and Stuart Spoerin Stevens (London, Ontario)	One charge was laid on November 10, 1982, under paragraph 36(1)(d). On July 18, 1983, the charge was withdrawn.
False or misleading representation in a material respect (Carpet cleaning services)	Carpet-Life Maintenance Services Ltd. (Winnipeg, Manitoba)	Seven charges were laid on September 22, 1982, under paragraph 36(1)(a). On July 19, 1983, a stay of proceedings was entered.
False or misleading representation in a material respect (Coffee pots)	O.E. McIntyre Ltd./Ltée carrying on business as Carole Martin Gifts (Dartmouth, Nova Scotia)	One charge was laid on June 20, 1983, under paragraph 36(1)(a). On July 25, 1983, the accused pleaded guilty and was convicted and fined $3,000.
False or misleading representation in a material respect (Jewellery)	Cathedral Jewellers Limited (Dartmouth, Nova Scotia)	One charge was laid on November 29, 1982, under paragraph 36(1)(a). On July 28, 1983, the accused pleaded guilty and was convicted and fined $1,000.
Misleading price representation (Jewellery)	Cathedral Jewellers Limited (Dartmouth, Nova Scotia)	One charge was laid on November 29, 1982, under paragraph 36(1)(d). On July 28, 1983, the charge was withdrawn.
False or misleading representation in a material respect (Houses)	Geoffrey Bushby Stephenson and Greyfriars Realty Ltd. (Surrey, British Columbia)	Six charges were laid on January 18, 1982, under paragraph 36(1)(a). The individual pleaded not guilty but, on August 4, 1983, was convicted on one charge and fined $1,000. The remaining charges against the individual and all charges against the corporate accused were dismissed.
False or misleading representation in a material respect (Gold chains)	Maritime Jewellery Retail Limited carrying on business as The Gold Factory (Dartmouth, Nova Scotia)	One charge was laid on August 10, 1983, under paragraph 36(1)(a). On August 16, 1983, the accused pleaded guilty and was convicted and fined $5,000.
False or misleading representation in a material respect (Shoes)	The T. Eaton Company Limited (Toronto, Ontario)	One charge was laid on April 20, 1983, under paragraph 36(1)(a). On August 22, 1983, the accused pleaded guilty and was convicted and fined $7,500.
False or misleading representation in a material respect (Apartment rentals)	Nova Recreation Development Company Limited (Moncton, New Brunswick)	Three charges were laid on August 8, 1983, under paragraph 36(1)(a). On August 24, 1983, the accused pleaded guilty to one charge and was convicted and fined $500. The remaining charges were withdrawn.
False or misleading representation in a material respect (Chimney cleaner)	Atlantic Combustion Products Limited and William A. Digdon (Debert, Nova Scotia)	One charge was laid on July 5, 1983, under paragraph 36(1)(a). On August 25, 1983, the charge was withdrawn.
Representation without proper test (Chimney cleaner)	Atlantic Combustion Products Limited and William A. Digdon (Debert, Nova Scotia)	One charge was laid on July 5, 1983, under paragraph 36(1)(b). On August 25, 1983, the corporate accused pleaded guilty and was convicted and fined $500. A Prohibition Order was issued. The charge against the individual was withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of inquiry	Names of Accused and Location of Offence	Action Taken and Results
Sale above advertised price (Chickens)	Cooper's Discount Foods (1973) Limited (St. John's, Newfoundland)	One charge was laid on May 2, 1983, under section 37.1. The accused pleaded not guilty but, on August 26, 1983, was convicted and fined $500.
False or misleading representation in a material respect (Snowmobiles)	Polaris Industries Inc. (Ottawa, Ontario)	One charge was laid on April 23, 1983, under paragraph 36(1)(a). On July 21, 1983, the accused was acquitted. The Crown applied for leave to appeal the acquittal but, on September 1, 1983, leave to appeal was denied.
Misleading price representation (Stereo equipment)	2001 Sound Centre Inc. carrying on business as 2001 Sound Centre and Karl H. Sontowski (Burnaby, British Columbia)	Two charges were laid on December 20, 1982, under paragraph 36(1)(d). The accused pleaded not guilty but, on April 27, 1983, were convicted. The corporate accused was fined $2,000 on each charge and the individual was fined $200 on each charge for a total fine of $4,400. The accused appealed the conviction but on September 1, 1983, the appeal was dismissed.
False or misleading representation in a material respect (Houses)	Nu-West Development Corporation (1982) Ltd. (Calgary, Alberta)	Eleven charges were laid on February 21, 1983, under paragraph 36(1)(a). On September 7, 1983, the accused pleaded guilty and was convicted and fined $2,500 on each charge for a total fine of $27,500.
False or misleading representation in a material respect (Trail bikes)	Dave's Sports Center Limited (Woodstock, New Brunswick)	One charge was laid on May 12, 1983, under paragraph 36(1)(a). On June 24, 1983, the accused pleaded not guilty but, on September 8, 1983, was found guilty and granted an absolute discharge.
False or misleading representation in a material respect (Gas-saving seminar)	Guy Sasseville (Victoriaville, Québec)	Three charges were laid on September 8, 1982, under paragraph 36(1)(a). On April 25, 1983, the accused pleaded guilty and was convicted. On September 12, 1983, the accused was fined $100 on each charge for a total fine of $300. The accused was also given a two-year term of probation.
False or misleading representation in a material respect (Hardware items)	J. Pascal Inc. (Ste-Foy, Québec)	Forty-three charges were laid on March 10, 1983, under paragraph 36(1)(a). On September 23, 1983, the accused pleaded guilty to 19 charges and was convicted and fined $750 on each charge for a total fine of $14,250. The remaining charges were withdrawn.
Sale above advertised price (Hardware items)	J. Pascal Inc. (Ste-Foy, Québec)	Six charges were laid on March 10, 1983, under section 37.1. On September 23, 1983, the accused pleaded guilty and was convicted and fined $750 on each charge for a total fine of $4,500.
False or misleading representation in a material respect (Gas furnaces)	Halton Heat Pumps Ltd. (Hamilton, Ontario)	One charge was laid on August 15, 1983, under paragraph 36(1)(a). On October 7, 1983, the accused pleaded guilty and was convicted and fined $300.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Collector plates)	O.E. McIntyre Ltd./ Ltée (Coquitlam, British Columbia)	One charge was laid on March 21, 1983, under paragraph 36(1)(a). On October 14, 1983, the accused pleaded guilty and was convicted and fined $4,000.
Representation without proper test (Gas-saving device)	David Tibor Szloboda and New World Technologies Inc. (Vancouver, British Columbia)	Two charges were laid on March 21, 1983, under paragraph 36(1)(b). On October 14, 1983, the charges against the corporate accused were withdrawn and the charges against the individual were dismissed.
False or misleading representation in a material respect (Charter flights)	Air Bridge Corp. Inc. and Edward Carroll carrying on business as Shamrock Tours (Toronto, Ontario)	Three charges were laid on May 26, 1982, under paragraph 36(1)(a). On April 14, 1983, the corporate accused pleaded guilty to one charge and was convicted and fined $15,000. The remaining charges against the corporation and all charges against the individual were withdrawn.
Misleading warranty representation (Charter flights)	Air Bridge Corp. Inc. and Edward Carroll carrying on business as Shamrock Tours (Toronto, Ontario)	One charge was laid on May 26, 1982, under paragraph 36(1)(c). On April 14, 1983, the charge against the corporate accused was withdrawn and, on October 17, 1983, the charge against the individual was withdrawn.
False or misleading representation in a material respect (Jewellery)	Paul Covant Limited carrying on business as Covant Credit Jewellers, Tan-Co Jewellers Limited carrying on business as Covant's of Thorncliffe, Paul Covant and Mark Covant (Toronto, Ontario)	Thirteen charges were laid on June 11, 1982, under paragraph 36(1)(a). Tan-Co was jointly charged with the other accused with respect to 12 of the charges. On March 28, 1983, the two corporate accused pleaded guilty to three charges and were convicted and each fined $2,000 on each charge, and Paul Covant pleaded guilty to one charge and was convicted and fined $5,000, for a total fine of $17,000. A Prohibition Order was issued against those three accused. On October 17, 1983, the remaining charges, including those against the other accused, were withdrawn.
Misleading price representation (Jewellery)	Paul Covant Limited carrying on business as Covant Credit Jewellers, Tan-Co Jewellers Limited carrying on business as Covant's of Thorncliffe, Paul Covant and Mark Covant (Toronto, Ontario)	Thirteen charges were laid on June 11, 1982, under paragraph 36(1)(d). Tan-Co was jointly charged with the other accused with respect to 12 of the charges. On October 17, 1983, all charges were withdrawn.
Representation without proper test (Synthetic lubricant)	Olde World of Canada, Ltd. (Edmonton, Alberta)	One charge was laid on March 7, 1983, under paragraph 36(1)(b). On October 17, 1983, the charge was withdrawn.
Misleading price representation (Pianos)	Winkler Music Shop Ltd. (Winkler, Manitoba)	One charge was laid on July 29, 1983, under paragraph 36(1)(d). On October 17, 1983, the accused pleaded guilty and was convicted and fined $500.
False or misleading representation in a material respect (Office supplies)	266104 Alberta Ltd. carrying on business as Office Supplies International (Calgary, Alberta)	One charge was laid on March 7, 1983, under paragraph 36(1)(a). The accused pleaded not guilty but, on October 19, 1983, was convicted and fined $5,000.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Dog training)	Canisphere Kennels Ltd. (Winnipeg, Manitoba)	One charge was laid on December 30, 1982, under paragraph 36(1)(a). The accused pleaded not guilty but, on October 20, 1983, was found guilty and granted an absolute discharge.
False or misleading representation in a material respect (Make-up cases)	Jay Norris Canada Inc. (Dartmouth, Nova Scotia)	One charge was laid on June 13, 1983, under paragraph 36(1)(a). The accused pleaded not guilty but, on October 28, 1983, was convicted and fined $7,500.
False or misleading representation in a material respect (Silver dollars)	476993 Ontario Corporation carrying on business as Upper Canada Mint and Claude A. Broos (New Westminster, Kelowna, Prince George and Vancouver, British Columbia)	Six charges were laid on January 25, 1982, under paragraph 36(1)(a). On January 13, 1983, the corporate accused pleaded guilty and was convicted and fined $3,000 on each charge for a total fine of $18,000. A stay of proceedings was entered with respect to the charges against the individual. The corporate accused appealed the sentence but, on October 28, 1983, the appeal was dismissed and the sentence upheld.
Representation without proper test (Electric speed control device)	Hudson's Bay Company Limited (Toronto, Ontario)	One charge was laid on June 29, 1981, under paragraph 36(1)(b). On April 13, 1982, the accused pleaded guilty and was convicted and fined $10,000. On May 5, 1982, the accused filed an appeal against sentence but, on November 1, 1983, the appeal was dismissed as abandoned by appellant.
Promotional contest (Skis and skates)	Tayside Sports Ltd. (Perth, Ontario)	Three charges were laid on September 20, 1983, under section 37.2. On November 1, 1983, the accused pleaded guilty to one charge and was convicted and fined $50. The remaining charges were withdrawn.
False or misleading representation in a material respect (Kerosene heaters)	Wayne Conrad carrying on business as Custom Van World (Sydney, Nova Scotia)	Four charges were laid on August 31, 1983, under paragraph 36(1)(a). On November 3, 1983, the accused pleaded guilty and was convicted and fined $250 on each of two charges and $50 on the other two charges for a total fine of $600.
Misleading price representation (Clothing)	Boutique des Amoureux Ltée (Montréal and Longueuil, Québec)	Three charges were laid on July 5, 1983, under paragraph 36(1)(d). On November 9, 1983, the accused pleaded guilty and was convicted and fined $500 on each charge for a total fine of $1,500.
Misleading price representation (Stereo equipment)	Mann's T.V. and Stereo Limited (Toronto, Ontario)	Six charges were laid on December 23, 1982, under paragraph 36(1)(d). On November 10, 1983, the charges were dismissed.
False or misleading representation in a material respect (Asbestex)	Edward Joseph McHale and Ottawa Perma-Coating Ltd. (Ottawa, Ontario)	One charge was laid on June 8, 1981, under paragraph 36(1)(a). On November 15, 1983, the charge was withdrawn.
Representation without proper test (Asbestex)	Edward Joseph McHale and Ottawa Perma-Coating Ltd. (Ottawa, Ontario)	One charge was laid on June 8, 1981, under paragraph 36(1)(b). On November 15, 1983, the corporate accused pleaded guilty and was convicted and fined $1,000. The charge against the individual was withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Misleading warranty representation (Employment opportunities)	John William Groves and Stef's World Trade Ltd. carrying on business as Lumby Publishing (Nelson, British Columbia)	Three charges were laid on September 22, 1983, under paragraph 36(1)(c). On November 15, 1983, the corporate accused pleaded guilty and was convicted and fined $100 on each charge for a total fine of $300. The charges against the individual were withdrawn.
Non-availability (Drill)	Hudson's Bay Co. carrying on business as Shop-Rite Catalogue Stores (Toronto, Ontario)	Three charges were laid on August 31, 1981, under section 37. On November 21, 1983, the accused pleaded guilty to one charge and was convicted and fined $1,000. The remaining charges were withdrawn.
Misleading price representation (Sundry items)	Ghislain Gobeil carrying on business as Liquidation Kent Enr. (Ottawa, Ontario)	One charge was laid on October 12, 1983, under paragraph 36(1)(d). On November 22, 1983, the accused pleaded guilty and was convicted and fined $500.
False or misleading representation in a material respect (Mattresses and box springs)	Majoli Furniture Ltd. and 408022 Ontario Limited both carrying on business as The Sleep Factory (Toronto, Ontario)	Eleven charges were laid on October 19, 1983, under paragraph 36(1)(a). On November 23, 1983, the accused pleaded guilty to seven charges and was convicted and fined $1,700 on each charge for a total fine of $11,900. The remaining charges were withdrawn.
False or misleading representation in a material respect (Furniture)	Meubles Gaston Auclair Inc. and Gaston Auclair (Cowansville, Québec)	One charge was laid on May 31, 1983, under paragraph 36(1)(a). On November 25, 1983, both accused pleaded not guilty but were convicted and fined $250 each for a total fine of $500.
False or misleading representation in a material respect (Hotel accommodation)	Keddy's Motor Inn (Fredericton) Limited (Fredericton, New Brunswick)	One charge was laid on November 8, 1983, under paragraph 36(1)(a). On November 29, 1983, the accused pleaded guilty and was convicted and fined $800.
False or misleading representation in a material respect (Woodstoves)	Les Foyers Econo Inc. (St-Romuald, Québec)	Three charges were laid on August 26, 1983, under paragraph 36(1)(a). On December 2, 1983, the accused pleaded guilty and was convicted and fined $300 on each charge for a total fine of $900.
False or misleading representation in a material respect (Real estate)	Morris Bojeck (St-Bruno, Québec)	One charge was laid on June 16, 1983, under paragraph 36(1)(a). On December 2, 1983, the accused was acquitted.
False or misleading representation in a material respect (Microwave ovens)	Ameublement Prestige Furniture Ltd. (Ottawa, Ontario)	One charge was laid on August 12, 1983, under paragraph 36(1)(a). On December 6, 1983, the accused pleaded guilty and was convicted and fined $1,000.
False or misleading representation in a material respect (Mattresses and box springs)	Belvedere Beddings Ltd. carrying on business as The Sleep Factory (Hamilton, Ontario)	Fourteen charges were laid on October 28, 1983, under paragraph 36(1)(a). On December 9, 1983, the accused pleaded guilty to 10 charges and was convicted and fined $1,200 on each charge for a total fine of $12,000. The remaining charges were withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Lighting fixtures)	Accessoires Nu-Dai Inc. (Montréal, Québec)	Twelve charges were laid on September 6, 1983, under paragraph 36(1)(a). On December 12, 1983, the accused pleaded guilty and was convicted and fined $100 on the first four charges, $50 on the next four charges and $25 on the remaining charges for a total fine of $700.
Sale above advertised price (Sundry items)	Cumberland Drugs (Merivale) Ltd. and Morrie Neiss (Dorval, Québec)	Sixteen charges were laid on July 8, 1981, under section 37.1. On December 19, 1983, the corporate accused pleaded guilty and was convicted and fined $400 on each charge for a total fine of $6,400. The charges against the individual were withdrawn.
Sale above advertised price (Pharmacy and sundry items)	André Aubé carrying on business as Pharmacie Aubé and as Uniprix (Montréal, Québec)	Five charges were laid on July 8, 1981, under section 37.1. On December 19, 1983, the accused pleaded guilty and was convicted and fined $400 on each charge for a total fine of $2,000.
False or misleading representation in a material respect (Bedding and drapery items)	D.J. Shiller Stores Ltd. carrying on business as Au Bon Marché (Montréal, Québec)	Twenty-six charges were laid on April 22, 1981, under paragraph 36(1)(a). On December 19, 1983, the accused pleaded guilty to 23 charges and was convicted and fined $400 on each charge for a total fine of $9,200. The remaining charges were withdrawn.
Non-availability (Bedding and drapery items)	D.J. Shiller Stores Ltd. carrying on business as Au Bon Marché (Montréal, Québec)	Six charges were laid on April 22, 1981, under section 37. On December 19, 1983, the accused pleaded guilty to five charges and was convicted and fined $400 on each charge for a total fine of $2,000. The remaining charge was withdrawn.
False or misleading representation in a material respect (Ski equipment)	Les Marchands Ro-Na Inc. carrying on business as Les Boutiques Podium (Boucherville, Québec)	Four charges were laid on October 25, 1982, under paragraph 36(1)(a). On December 19, 1983, the accused pleaded guilty and was convicted and fined $400 on each charge for a total fine of $1,600.
Sale above advertised price (Sundry items)	Jean-Marie Tétrault and Thomas Laperrière carrying on business as Tétrault et Laperrière Associés and as Uniprix (Montréal, Québec)	Fifteen charges were laid on July 9, 1981, under section 37.1. On December 19, 1983, both accused pleaded guilty and were convicted and each fined $200 on each charge for a total fine of $6,000.
False or misleading representation in a material respect (Houses)	Atco Industries (N.A.) Ltd. and Atco Housing and Development Ltd. (Edmonton, Alberta)	One charge was laid on July 26, 1982, under paragraph 36(1)(a) against Atco Industries. The charge was subsequently amended to include Atco Housing and Development. The accused pleaded not guilty but, on December 21, 1983, Atco Housing was convicted and fined $3,500. The charge against Atco Industries was dismissed.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Engine additive)	Krisal Distributing Limited and Calvin Gerald Doran (Thunder Bay, Ontario)	Two charges were laid on May 26, 1983, under paragraph 36(1)(a). An additional charge was laid on August 25, 1983. On December 20, 1983, both accused pleaded guilty to one charge and were convicted and each fined $250 for a total fine of $500. The remaining two charges were withdrawn. A Prohibition Order was issued against both accused.
Representation without proper test (Engine additive)	Krisal Distributing Limited and Calvin Gerald Doran (Thunder Bay, Ontario)	Three charges were laid on May 26, 1983, under paragraph 36(1)(b). On August 25, 1983, an additional charge was laid. On December 20, 1983, both accused pleaded guilty to one charge and were convicted and each fined $250 for a total fine of $500. The remaining three charges were withdrawn. A Prohibition Order was issued against both accused.
False or misleading representation in a material respect (Shopping centre merchandise)	Hillmond Investments Ltd. and William Sorokolit Realty Limited and John Sorokolit (Mississauga, Ontario)	One charge was laid on September 22, 1983, under paragraph 36(1)(a). On December 21, 1983, the charge was withdrawn.
Promotional contest (Shopping centre merchandise)	Hillmond Investments Ltd. and William Sorokolit Realty Limited and John Sorokolit (Mississauga, Ontario)	One charge was laid on September 22, 1983, under section 37.2. On December 21, 1983, William Sorokolit Realty pleaded guilty and was convicted and fined $1,000. The charge against the other accused was withdrawn.
False or misleading representation in a material respect (Televisions)	Mad Man Murphy Limited (St. John's, Newfoundland)	One charge was laid on March 10, 1983, under paragraph 36(1)(a). The accused pleaded not guilty but, on June 3, 1983, was convicted and fined $1. On June 10, 1983, the Crown filed an appeal against sentence. The appeal was heard on December 7, 1983, and on January 3, 1984, the fine was increased to $750.
Misleading price representation (Kitchen knife set)	Carignan Demarbre & Ass. Ltée and André Carignan (Winnipeg, Manitoba)	One charge was laid on August 19, 1983, under paragraph 36(1)(d). On January 9, 1984, the corporate accused pleaded guilty and was convicted and fined $200. A stay of proceedings was entered against the individual.
False or misleading representation in a material respect (Health spa facilities)	International Spa Ltd. (Winnipeg, Manitoba)	Two charges were laid on October 24, 1983, under paragraph 36(1)(a). On January 9, 1984, the accused pleaded guilty to one charge and was convicted and fined $500. A stay of proceedings was entered on the second charge.
False or misleading representation in a material respect (Telephones)	Carignan Demarbre and Ass. Ltée and André Carignan (Neepawa, Manitoba)	Two charges were laid on June 24, 1983, under paragraph 36(1)(a). On January 9, 1984, a stay of proceedings was entered.
Misleading price representation (Telephones)	Carignan Demarbre and Ass. Ltée and André Carignan (Neepawa, Manitoba)	Two charges were laid on June 24, 1983, under paragraph 36(1)(d). On January 9, 1984, the corporate accused pleaded guilty and was convicted and fined $150 on each charge for a total fine of $300. A stay of proceedings was entered in respect of the individual.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Representation without proper test (Hair clinic)	Bayard Hair and Scalp Clinic Limited and Leslie H.S. Birch (Winnipeg, Manitoba)	One charge was laid on September 15, 1983, under paragraph 36(1)(b). On January 19, 1984, the individual pleaded guilty and was convicted and fined $1,000. A stay of proceedings was entered in respect of the company.
Representation without proper test (Gas additive)	Can-Pro Marketing Ltd., Joseph Pare and Paul Pare (Winnipeg, Manitoba)	Four charges were laid on May 21, 1982, under paragraph 36(1)(b). On January 20, 1984, the corporate accused pleaded guilty to three charges and was convicted and fined $5,000 on one charge and $1,000 on each of the other two charges for a total fine of $7,000. A stay of proceedings was entered in respect of the remaining charge against the corporate accused and in respect of all charges against the individuals.
False or misleading representation in a material respect (Building supplies)	Surplus de Manufacture Philippe Bouchard & Fils Inc. (St-Ambroise, Québec)	Four charges were laid on June 22, 1983, under paragraph 36(1)(a). On January 23, 1984, the accused pleaded guilty and was convicted and fined $500 on each charge for a total fine of $2,000.
Misleading price representation (Building supplies)	Surplus de Manufacture Philippe Bouchard & Fils Inc. (St-Ambroise, Québec)	Four charges were laid on June 22, 1983, under paragraph 36(1)(d). On January 23, 1984, the accused pleaded guilty and was convicted and fined $500 on each charge for a total fine of $2,000.
False or misleading representation in a material respect (Advertising novelties)	L.S.P. Eurcan Advertising Specialties Inc. carrying on business as Eurcan Inc. and Kenneth Shore (Montréal, Québec, and Vancouver, British Columbia)	Two charges were laid on October 4, 1983, under paragraph 36(1)(a). On November 30, 1983, Kenneth Shore pleaded guilty and was convicted and, on January 25, 1984, was fined $6,000 on each charge for a total fine of $12,000. The charges against the company were stayed.
Promotional contest (Advertising novelties)	L.S.P. Eurcan Advertising Specialties Inc. carrying on business as Eurcan Inc. and Kenneth Shore (Montréal, Québec, and Vancouver, British Columbia)	One charge was laid on October 4, 1983, under section 37.2. On November 30, 1983, Kenneth Shore pleaded guilty and was convicted and, on January 25, 1984, was fined $6,000. The charge against the company was stayed.
False or misleading representation in a material respect (Microwave ovens)	Liquidex Meubles Inc. (Laval, Québec)	One charge was laid on November 1, 1983, under paragraph 36(1)(a). On January 26, 1984, the accused pleaded guilty and was convicted and fined $1,000.
False or misleading representation in a material respect (Free meal)	Restaurant Kobe Ltée/ Kobe Restaurant Ltd. (Sherbrooke, Québec)	One charge was laid on November 23, 1983, under paragraph 36(1)(a). On January 27, 1984, the accused pleaded guilty and was convicted and fined $500.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Diamond rings)	Simpsons-Sears Limited and H. Forth & Co. Limited (Canada-wide)	On September 15, 1980, 13 charges were laid against Simpsons-Sears Limited, two under the former section 37 and 11 under paragraph 36(1)(a), and 12 charges were laid against H. Forth & Co. Limited, two under the former section 37 and 10 under paragraph 36(1)(a). Both accused pleaded not guilty but, on May 13, 1983, were convicted on all charges. On June 30, 1983, Simpsons-Sears Limited was fined $1 million and H. Forth & Co. Limited was fined $12,000. On July 27, 1983, Simpsons-Sears Limited filed an appeal against conviction and sentence. On January 30, 1984, the company withdrew the appeal.
False or misleading representation in a material respect (Reducing devices)	C.C.C.L. Canadian Consumer Company Limited (Ottawa, Ontario)	One charge was laid at Ottawa on December 13, 1979, under paragraph 36(1)(a). The charge was subsequently withdrawn and, on June 10, 1981, two charges were laid at Toronto. The accused pleaded not guilty but on February 7, 1983, was convicted on one charge and fined $10,000. The remaining charge was withdrawn. An appeal was filed by the accused but was abandoned on January 31, 1984.
False or misleading representation in a material respect (Reducing devices)	C.C.C.L. Canadian Consumer Company Limited carrying on business as Slim-Skins and Allan Diamond (Toronto, Ontario)	Six charges were laid on April 14, 1981, under paragraph 36(1)(a). Both accused pleaded not guilty but, on February 7, 1983, were convicted on one charge and each fined $10,000 for a total fine of $20,000. The remaining charges were withdrawn. An appeal was filed by the accused but was abandoned on January 31, 1984.
Representation without proper test (Water conditioner)	Dynamic Water Conditioning Inc. (Munster and Richmond, Ontario)	One charge was laid on June 27, 1983, under paragraph 36(1)(b). A stay of proceedings was entered on February 1, 1984.
False or misleading representation in a material respect (Furnaces)	Western Energy Corporation (Regina, Saskatchewan)	One charge was laid on October 17, 1983, under paragraph 36(1)(a). On February 2, 1983, the accused pleaded guilty and was convicted and fined $300.
Representation without proper test (Furnaces)	Western Energy Corporation (Regina, Saskatchewan)	One charge was laid on October 17, 1983, under paragraph 36(1)(b). On February 3, 1984, the accused pleaded guilty and was convicted and fined $300.
False or misleading representation in a material respect (Water distiller)	356433 Ontario Ltd. carrying on business as Pure Water Canada- Eau Pure Canada and Alfred Guy Hamel (Windsor, Ontario)	One charge was laid on November 30, 1982, under paragraph 36(1)(a). Both accused pleaded not guilty but, on February 3, 1984, were convicted. The corporate accused was fined $7,000 and the individual $100 for a total fine of $7,100.
Representation without proper test (Water distiller)	356433 Ontario Ltd. carrying on business as Pure Water Canada- Eau Pure Canada and Alfred Guy Hamel (Windsor, Ontario)	Four charges were laid on November 30, 1982, under paragraph 36(1)(b). Both accused pleaded not guilty but, on February 3, 1984, were convicted. The corporate accused was fined $3,000 on each charge and the individual was fined $100 on each charge for a total fine of $12,400.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Furniture)	Gordon Creighton Patton and Patton's Place Limited carrying on business as Patton's Place (London, Ontario)	Two charges were laid on February 21, 1983, under paragraph 36(1)(a). On February 6, 1984, the corporate accused pleaded guilty to one charge and was convicted and fined $5,000. The remaining charge against the corporate accused and the charges against the individual were withdrawn.
Misleading price representation (Furniture)	Gordon Creighton Patton and Patton's Place Limited carrying on business as Patton's Place (London, Ontario)	Two charges were laid on February 21, 1983, under paragraph 36(1)(d). On February 6, 1984, the charges were withdrawn.
False or misleading representation in a material respect (Furniture and carpeting)	Combined Furniture Warehouse Sales Limited carrying on business as Canadian Carpet and Furniture Liquidators (Hamilton, Ontario)	One charge was laid on May 10, 1983, under paragraph 36(1)(a). On February 10, 1984, a preliminary motion to amend the defective information was refused by the court and the information was therefore annulled.
Misleading price representation (Televisions)	Importations D'électronique M.T.L. Inc. (Montréal, Québec)	Eight charges were laid on December 13, 1982, under paragraph 36(1)(d). A stay of proceedings was entered on February 13, 1984.
False or misleading representation in a material respect (Mending kit)	The Home Shoppe Ltd. (Moncton, New Brunswick)	One charge was laid on December 2, 1982, under paragraph 36(1)(a). On August 16, 1983, the accused pleaded not guilty but was convicted and fined $25,000. An appeal was filed by the accused against sentence. On February 14, 1984, the appeal was heard and the fine was reduced to $10,000.
False or misleading representation in a material respect (Plastic glasses)	Fibrican Inc. (Lachine, Québec)	Two charges were laid on January 19, 1984, under paragraph 36(1)(a). On February 17, 1984, the accused pleaded guilty and was convicted and fined $500 on each charge for a total fine of $1,000.
False or misleading representation in a material respect (Watches)	I.A.M. Discount Inc. carrying on business as Savetix (Toronto, Ontario)	One charge was laid on December 1, 1983, under paragraph 36(1)(a). On February 21, 1984, the accused pleaded guilty and was convicted and fined $800.
Sale above advertised price (Pharmacy items)	Jean-Claude Brouillette carrying on business as Pharmaprix (Montréal, Québec)	Twelve charges were laid on November 27, 1981, under section 37.1. On February 21, 1984, the accused pleaded guilty and was convicted and fined $400 on each charge for a total fine of $4,800.
Sale above advertised price (Sundry items)	Jean Couts carrying on business as Pharmacie Jean Couts Enr. (Longueuil and St-Bruno, Québec)	Thirty charges were laid on November 30, 1981, under section 37.1. On February 22, 1984, the accused pleaded guilty and was convicted and fined $400 on each charge for a total fine of $12,000.
Sale above advertised price (Sundry items)	Jacques Filion carrying on business as Pharmaprix (Longueuil, Québec)	Six charges were laid on November 30, 1981, under section 37.1. On February 22, 1984, the accused pleaded guilty and was convicted and fined $400 on each charge for a total fine of $2,400.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Sale above advertised price (Sundry items)	Jean St-Onge and Ecosofar Inc. carrying on business as Pharmacies Jean Coutu (J. St-Onge) Enr. (Brossard, Québec)	Eighteen charges were laid on November 30, 1981, under section 37.1. On February 22, 1984, Ecosofar pleaded guilty and was convicted and fined $400 on each charge for a total fine of $7,200. The charges against the individual were withdrawn.
Sale above advertised price (Pharmacy items)	Pierre Brunet carrying on business as Pharmaprix (Longueuil, Québec)	Five charges were laid on November 30, 1981, under section 37.1. On February 22, 1984, the accused pleaded guilty and was convicted and fined $400 on each charge for a total fine of $2,000.
Sale above advertised price (Sundry items)	Paul St-Onge and Les Magasins Longueuil Inc. carrying on business as Pharmacie Jean Coutu (P. St-Onge) Enr. (Longueuil, Québec)	Twenty-four charges were laid on November 30, 1981, under section 37.1. On February 22, 1984, Les Magasins Longueuil pleaded guilty and was convicted and fined $400 on each charge for a total of $9,600. The charges against the individual were withdrawn.
Sale above advertised price (Sundry items)	André St-Onge, Paul St-Onge and Jean St- Onge and Ecosofar Inc. carrying on business as Pharmacie Jean Coutu (St-Hubert) Enr. (St-Hubert, Québec)	Eight charges were laid on November 10, 1981, under section 37.1. The three accused subsequently incorporated under the name of Ecosofar Inc. On February 22, 1984, the company pleaded guilty and was convicted and fined $400 on each charge for a total fine of $3,200.
Representation without proper test (Rebound exerciser)	Denis Albert Walker carrying on business as Shirdon Enterprises and Universal Trampoline Canada (Winnipeg, Manitoba)	One charge was laid on December 2, 1982, under paragraph 36(1)(b). On February 23, 1984, the charge was dismissed.
False or misleading representation in a material respect (Novelty items)	107014 Canada Ltd. carrying on business as Executive Marketing Service and Sender Vaiser and Cecile Vaiser (Montréal, Québec, and Vancouver, British Columbia)	Four charges were laid on October 4, 1983, under paragraph 36(1)(a). On February 21, 1984, the company and Sender Vaiser pleaded guilty to two charges and, on February 24, 1984, were convicted and a Prohibition Order was issued. The accused were each fined $5,000 on each charge for a total of $20,000. The remaining charges against them and all charges against C. Vaiser were stayed.
Promotional contest (Novelty items)	107014 Canada Ltd. carrying on business as Executive Marketing Service and Sender Vaiser and Cecile Vaiser (Montréal, Québec, and Vancouver, British Columbia)	Two charges were laid on October 4, 1983, under section 37.2. On February 21, 1984, the company and Sender Vaiser pleaded guilty to one charge and, on February 24, 1984, were convicted and a Prohibition Order was issued. The accused were each fined $5,000 for a total fine of $10,000. The remaining charge against them and all charges against C. Vaiser were stayed.
False or misleading representation in a material respect (Oil paintings)	La Maison du Cadre (MDC) Inc. (Montréal, Québec)	Two charges were laid on September 14, 1983, under paragraph 36(1)(a). On March 8, 1984, the accused pleaded guilty and was convicted and fined $850 on each charge for a total fine of $1,700.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Double ticketing (Oil paintings)	La Maison du Cadre (MDC) Inc. (Montréal, Québec)	Two charges were laid on September 14, 1983, under section 36.2. On March 8, 1984, the accused pleaded guilty and was convicted and fined $400 on each charge for a total fine of $800.
Sale above advertised price (Oil paintings)	La Maison du Cadre (MDC) Inc. (Montréal, Québec)	One charge was laid on September 14, 1983, under section 37.1. On March 8, 1984, the charge was withdrawn.
Promotional contest (Jeans)	Patricia Lynn Fashions Ltd. carrying on business as The Jean Warehouse and John Francis O'Neill (Caledon, Ontario)	One charge was laid on July 18, 1983, under section 37.2. The accused pleaded not guilty but, on March 13, 1984, was convicted and fined $500. The charge against J.F. O'Neill was withdrawn.
False or misleading representation in a material respect (Pasta maker)	Italfina (1981) Inc. and Vito Violante (Toronto, Ontario)	One charge was laid on January 17, 1984, under paragraph 36(1)(a). On March 14, 1984, the accused pleaded guilty and was convicted and fined $3,500. The charge against the individual was withdrawn.
False or misleading representation in a material respect (Household and hardware items)	Miracle Mart Inc. (Québec, Québec)	Twenty-four charges were laid on December 14, 1981, under paragraph 36(1)(a). On March 16, 1984, the accused pleaded guilty and was convicted and fined $3,500 on each charge for a total fine of $84,000.
Double ticketing (Food items)	Steinberg Inc. (Ville LaSalle, Québec)	Thirty-two charges were laid on January 30, 1981, under section 36.2. On March 16, 1984, the accused pleaded guilty and was convicted and fined $415 on each charge for a total fine of $13,280.
Sale above advertised price (Food items)	Steinberg Inc. (Ville LaSalle, Québec)	Fifteen charges were laid on January 30, 1981, under section 37.1. On March 16, 1984, the accused pleaded guilty and was convicted and fined $415 on each charge for a total fine of $6,225.
Sale above advertised price (Household and hardware items)	Miracle Mart Inc. (Brossard, Québec)	Sixty-three charges were laid on December 7, 1979, under section 37.1. On January 30, 1981, the court ruled that section 37.1 was *ultra vires*. The Crown appealed the ruling and, on February 16, 1982, the appeal was allowed and a new trial ordered. The accused applied for leave to appeal but, on January 24, 1984, the appeal was withdrawn. On March 19, 1984, the accused pleaded guilty and was convicted and fined $420 on each charge for a total fine of $26,460.
False or misleading representation in a material respect (Jewellery)	B.D.H. Jewellers Ltd., Kingsway Jewellers Limited, 467350 Ontario Limited, Ru- Mare Corporation Inc., Twenty-Four Karat Management Inc., Helene Jewellers Incorporated, JJL Jewellers Limited, Ruth Jewellers Ltd., and Joseph Puckman (Toronto, Ontario)	On November 24, 1983, two charges were laid under paragraph 36(1)(a). On March 23, 1984, B.D.H. Jewellers Ltd., Kingsway Jewellers Limited, 467350 Ontario Limited and Ru-Mare Corporation Inc. pleaded guilty to one charge and were convicted and each fined $2,500 for a total fine of $10,000. The remaining charges were withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Sale above advertised price (Real estate)	Réal Proulx carrying on business as Gestion des Récollets (Cap-de-la-Madeleine, Québec)	Eight charges were laid on December 17, 1982, under section 37.1. On March 24, 1984, the company pleaded guilty and was convicted and fined $400 on each charge for a total fine of $3,200.
False or misleading representation in a material respect (Furniture)	G.L.R. Distribution Inc. (Victoriaville, Québec)	Four charges were laid on September 22, 1983, under paragraph 36(1)(a). On March 26, 1984, the charges were dismissed.
False or misleading representation in a material respect (Banking services)	Bank of Montreal (Vancouver, British Columbia)	Three charges were laid on June 30, 1983, under paragraph 36(1)(a). On March 28, 1984, the accused was acquitted.

APPENDIX III

Proceedings Completed Following Application to the Restrictive Trade Practices Commission under Part IV.1 of the Act

Nature of Inquiry	Names of persons or Companies Proceeded Against	Action Taken and Results
Tied selling (Radio and television rating services)	BBM Bureau of Measurement	An application was filed under section 31.4 with the Commission on August 21, 1979, and the Commission found, on October 30, 1981, that BBM was engaged in tied selling. On December 19, 1981, the Commission issued an order prohibiting BBM from continuing the practice of tied selling of its radio audience measurement service to its television audience measurement service. On December 31, 1981, BBM appealed to the Federal Court of Appeal to have the order reviewed and set aside. BBM then sought a stay of the order and subsequently brought a motion in the Federal Court — Trial Division to stay the execution of the order. The Trial Division ruled on April 1, 1982, that it did not have jurisdiction to stay the order. On March 6, 1984, the Federal Court of Appeal dismissed the application to review and set aside the order of the Commission.

APPENDIX IV

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken
False or misleading representation in a material respect (Travel tours)	Skylark Holidays Limited (Stephenville, Newfoundland)	One charge was laid on November 6, 1979, under paragraph 36(1)(a). On April 17, 1981, the charge was dismissed. Under appeal by Crown.
False or misleading representation in a material respect (T.V. antenna)	C.C.C.L. Canadian Consumer Company Ltd. (Montréal, Québec)	One charge was laid on November 23, 1979, under paragraph 36(1)(a). The accused was convicted on December 11, 1980, and fined $7,500 on January 10, 1981. On January 5, 1981, the accused appealed.
False or misleading representation in a material respect (Bust developer)	C.C.C.L. Canadian Consumer Company Ltd. and Allan Diamond (Montréal, Québec)	One charge was laid on May 5, 1980, under paragraph 36(1)(a). On February 23, 1984, the accused were convicted. Sentencing is scheduled for May 1984. Under appeal by accused.
Representation without proper test (Bust developer)	C.C.C.L. Canadian Consumer Company Ltd. and Allan Diamond (Montréal, Québec)	One charge was laid on May 5, 1980, under paragraph 36(1)(b). On February 23, 1984, the accused were convicted. Sentencing is scheduled for May 1984. Under appeal by accused.
Pyramid selling scheme (Food supplements, cleaning and personal care products)	Shaklee Canada Inc. (Edmonton, Alberta)	Proceedings were instituted on November 14, 1980, in Edmonton, Alberta, under subsection 30(2) for an Order of Prohibition. On February 16, 1981, the order was refused by the Federal Court. Under appeal by the Crown.
Double ticketing (Food items)	Supermarchés Dominion Ltée (Montréal, Verdun and St. Léonard, Québec)	Eleven charges were laid on January 30, 1981, under section 36.2.
Sale above advertised price (Food items)	Supermarchés Dominion Ltée (Montréal, Verdun and St. Léonard, Québec)	Thirty-one charges were laid on January 30, 1981, under section 37.1.
Misleading price representation (Massagers)	K.B.M. Electropedic Adjustable Beds Ltd. carrying on business as Electropedic Products (Calgary, Alberta)	One charge was laid on February 6, 1981, under paragraph 36(1)(d). On July 10, 1981, the charge was dismissed. The Crown appealed the dismissal but, on September 21, 1983, the appeal was denied. Under appeal by Crown.
Sale above advertised price (Food items)	Centre D'Escompte Racine Inc. carrying on business as Uniprix (Beauport, Québec)	Fifteen charges were laid on March 9, 1981, under section 37.1. The company was fined $40 on each charge for a total fine of $600. Under appeal by Crown.
Sale above advertised price (Food items)	Dominion Stores Limited/Les Supermarchés Dominion Ltée (Ste-Foy, Québec)	Seventeen charges were laid on March 17, 1981, under section 37.1.
Sale above advertised price (Beauty products)	Florent Létourneau carrying on business as Pharmacie de la Couronne Enr. and as Uniprix (Québec, Québec)	Eight charges were laid on March 17, 1981, under section 37.1. On March 2, 1984, the accused pleaded guilty and was fined $40 on each charge for a total fine of $320. Under appeal by Crown.
Sale above advertised price (Household products)	Raymond Martel carrying on business as Pharmacie Martel Enr. and as Uniprix (Loretteville, Québec)	Thirteen charges were laid on March 17, 1981, under section 37.1. On March 2, 1984, the accused pleaded guilty and was convicted and fined $40 on each charge for a total fine of $520. Under appeal by Crown.

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken
Sale above advertised price (Beauty products)	Entreprises Pierre Deschênes Inc. carrying on business as Pharm-escomptes Jean Coutu (Jonquière, Québec)	Twenty-two charges were laid on March 23, 1981, under section 37.1.
Sale above advertised price (Beauty products)	Justin Maltais and Luc Maltais carrying on business as Justin Maltais, Luc Maltais Pharmaciens and as Uniprix (Chicoutimi, Québec)	Ten charges were laid on March 23, 1981, under section 37.1.
Sale above advertised price (Sundry items)	Guy St-Onge carrying on business as Pharmacie Jean Coutu and Farbec Inc. (Guy St-Onge) Enr. (Québec, Québec)	Fourteen charges were laid on March 31, 1981, under section 37.1. The corporate accused was charged solely with respect to 11 charges and the individual was charged solely with respect to three charges. On March 2, 1984, G. St-Onge was fined $100 on three charges and Farbec Inc. was fined $100 on each of the 11 charges for a total fine of $1,400. Under appeal by Crown.
False or misleading representation in a material respect (Massagers)	K.B.M. Electropedic Adjustable Beds Ltd. carrying on business as Electropedic Products (Calgary, Alberta)	One charge was laid on April 29, 1981, under paragraph 36(1)(a). The accused pleaded not guilty but, on July 10, 1981, was convicted and fined $2,500. The accused appealed the conviction and, on September 21, 1983, the appeal was allowed. The Crown has appealed the decision.
Sale above advertised price (Pharmacy items)	Magasins Heriot Inc. carrying on business as Pharm-escomptes Jean Coutu (Drummondville, Québec)	Nineteen charges were laid on May 6, 1981, under section 37.1.
False or misleading representation in a material respect (Electric drill)	Consumers Distributing Company Limited (County of Lambton, Ontario)	One charge was laid on June 29, 1981, under paragraph 36(1)(a). The accused pleaded guilty and, on April 19, 1982, was convicted and fined $7,000. Under appeal by accused.
False or misleading representation in a material respect (Gas grill)	Consumers Distributing Company Limited (Toronto, Ontario)	Two charges were laid on June 29, 1981, under paragraph 36(1)(a). The accused pleaded guilty to one charge and, on April 19, 1982, was convicted and fined $7,000. The remaining charge was withdrawn. Under appeal by accused.
Non-availability (Toy)	Consumers Distributing Company Limited (Ottawa, Ontario)	One charge was laid on June 29, 1981, under section 37. The accused pleaded guilty and, on April 19, 1982, was convicted and fined $7,000. Under appeal by accused.
Representation without proper test (Electric speed control)	Consumers Distributing Company Limited (Toronto, Ontario)	One charge was laid on June 29, 1981, under paragraph 36(1)(b). The accused pleaded guilty and, on April 19, 1982, was convicted and fined $7,000. Under appeal by accused.
Sale above advertised price (Gold rings)	Consumers Distributing Company Limited (Toronto, Ontario)	One charge was laid on June 29, 1981, under section 37.1. The accused pleaded guilty and, on April 19, 1983, was convicted and fined $7,000. Under appeal by accused.
False or misleading representation in a material respect (Mail solicitations)	Intra Canada Telecommunications Limited and Ralph Lawrence Devine (Toronto, Ontario)	One charge was laid on October 23, 1981, under paragraph 36(1)(a). The accused pleaded not guilty but, on March 16, 1984, was convicted. Under appeal by accused.

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken
False or misleading representation in a material respect (Real estate)	Samuel Sarick Limited, Cannard Investments Limited, Collier & Park Advertising Ltd. and Murray Warsh Realty (1978) Limited (Toronto, Ontario)	Four charges were laid on October 23, 1981, under paragraph 36(1)(a). On September 16, 1982, Cannard Investments pleaded guilty to one charge and was convicted and fined $1,500. The remaining charges and all charges against the other accused were withdrawn. Under appeal by Crown.
False or misleading representation in a material respect (Gas-saving seminar)	Thomas James Scott and James Lowry (Calgary, Alberta)	One charge was laid on October 28, 1981, under paragraph 36(1)(a). On November 6, 1981, the charge was withdrawn and replaced by another charge under the same paragraph.
False or misleading representation in a material respect (Carpets)	La Factorerie de Tapis D.B. Ltée/D.B. Carpet Factory Ltd. (St. Léonard, Québec)	Six charges were laid on November 2, 1981, under paragraph 36(1)(a).
Sale above advertised price (Pharmacy items)	François Traversy carrying on business as Pharmacie Jean Coutu (F. Traversy) Enr. (Verdun, Québec)	Five charges were laid on November 27, 1981, under section 37.1.
Sale above advertised price (Pharmacy items)	Gilles Raymond carrying on business as Pharmacie Jean Coutu (G. Raymond) Enr. and as Pharmacie Jean Coutu (Dorion) Enr. (Dorion and Valleyfield, Québec)	Seventeen charges were laid on November 27, 1981, under section 37.1.
Sale above advertised price (Pharmacy items)	Jean Coutu carrying on business as Pharmacies Escompte Jean Coutu Enr. & Pharmacies Jean Coutu Enrg. (Répentigny, Québec)	Twenty-two charges were laid on November 27, 1981, under section 37.1.
Sale above advertised price (Pharmacy items)	Jean-Paul Duquet carrying on business as Pharmacie Jean Coutu (J.P. Duquet) Enrg. & Pharmont Ltée (Montréal, Québec)	Twenty-two charges were laid on November 27, 1981, under section 37.1.
False or misleading representation in a material respect (Gas-saving device)	Anthony Simon carrying on business as Simons Importers and Wholesalers (Grand Falls, Newfoundland)	One charge was laid on December 2, 1981, under paragraph 36(1)(a). On June 17, 1982, the accused was acquitted. Under appeal by Crown.
Representation without proper test (Engine treatment)	Petro-Lon Canada (Edmonton, Alberta)	One charge was laid on December 7, 1981, under paragraph 36(1)(b).
Sale above advertised price (Sundry items)	René Brault, Laurent Trudeau and Distributions Brault & Trudeau Inc. carrying on business under the name and style of Pharmacie Jean Coutu (R. Brault & L. Trudeau) Enr. (Ste-Agathe and St-Jovite, Québec)	Twelve charges were laid on December 7, 1981, under section 37.1.
Sale above advertised price (Sundry items)	Jean Coutu and Louis Michaud carrying on business as Jean Coutu (St-Jérome) Enr. (St-Jérome, Québec)	Nineteen charges were laid on December 8, 1981, under section 37.1.
Misleading price representation (Dining room set)	Great Universal Stores of Canada Limited carrying on business as Legaré Meubles (Québec, Québec)	Two charges were laid on January 26, 1982, under paragraph 36(1)(d).
Sale above advertised price (Pharmacy items)	Jean Coutu carrying on business as Pharmacie Jean Coutu Enr. (Granby, Québec)	Twelve charges were laid on March 19, 1982, under section 37.1.

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken
False or misleading representation in a material respect (Gas-saving device)	Michael Bourdeaux (Vancouver, British Columbia)	One charge was laid on July 30, 1982, under paragraph 36(1)(a).
Representation without proper test (Gas-saving device)	Michael Bourdeaux (Vancouver, British Columbia)	One charge was laid on July 30, 1982, under paragraph 36(1)(b).
Misleading price representation (Cassettes)	Deals on Wheels Car Stereo Ltd. carrying on business as Deals on Wheels and Leslie T. Sims (Vancouver, British Columbia)	Three charges were laid on September 10, 1982, under paragraph 36(1)(d).
False or misleading representation in a material respect (Gas-saving device)	Jean Dion and Gaston Hébert (Sept-Iles, Québec)	One charge was laid on September 13, 1982, under paragraph 36(1)(a).
Misleading testimonial or test (Gas-saving device)	Jean Dion and Gaston Hébert (Sept-Iles, Québec)	One charge was laid on September 13, 1982, under section 36.1.
Representation without proper test (Gas-saving device)	Jean Dion and Gaston Hébert (Sept-Iles, Québec)	One charge was laid on September 13, 1982, under paragraph 36(1)(b).
False or misleading representation in a material respect (Pattern fitting clinic)	Bernard Oleyar and Blaise Oleyar operating under the firm name and style of Mid West Pattern Clinic Inc. (Winnipeg, Manitoba)	One charge was laid on September 15, 1982, under paragraph 36(1)(a).
Misleading price representation (Pattern fitting clinic)	Bernard Oleyar and Blaise Oleyar operating under the firm name and style of Mid West Pattern Clinic Inc. (Winnipeg, Manitoba)	Two charges were laid on September 15, 1982, under paragraph 36(1)(d).
Representation without proper test (Gas-saving device)	Donald J. Graydon carrying on business as Dee-E.n Products (Tillsonburg, Ontario)	One charge was laid on September 17, 1982, under paragraph 36(1)(b). On July 21, 1983, the accused was convicted and fined $50. Under appeal by accused.
Representation without proper test (Gas-saving device)	Fuel-O-Matic Manufacturing (Eastern) Limited carrying on business as Fuel-O-Matic Manufacturing Limited and Kenneth Graydon (Tillsonburg, Ontario)	One charge was laid on September 17, 1982, under paragraph 36(1)(b). On July 21, 1983, the corporate accused was fined $250 and the individual was fined $50. Under appeal by the Crown.
False or misleading representation in a material respect (Jewellery)	Thompson's Jewellery Limited (St. John's, Newfoundland)	Two charges were laid on October 6, 1982, under paragraph 36(1)(a). On January 7, 1983, the accused pleaded guilty and was convicted and fined $2,500 on each charge for a total fine of $5,000. Under appeal by accused.
False or misleading representation in a material respect (Travel tours)	Snowbird Travel Ltd. (Nampa, Alberta)	One charge was laid on October 27, 1982, under paragraph 36(1)(a).
False or misleading representation in a material respect (Bulk foods)	Loblaws Limited (Toronto, Ontario)	Four charges were laid on November 12, 1982, under paragraph 36(1)(a). The accused pleaded not guilty but, on May 24, 1983, was convicted and fined $20,000. Under appeal by accused.

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken
False or misleading representation in a material respect (Stereo equipment)	Mann's T.V. & Stereo Limited (Toronto, Ontario)	Nineteen charges were laid on December 23, 1982, under paragraph 36(1)(a). On November 10, 1983, the accused pleaded not guilty but was convicted on 13 charges. The remaining charges were stayed. On February 1, 1984, the accused was fined $4,000 on each of six charges for a total fine of $24,000. Sentence was suspended on the other seven charges. Under appeal by accused.
False or misleading representation in a material respect (Hammond organs)	Roy & Bilodeau Inc. (Montréal, Québec)	Two charges were laid on January 13, 1983, under paragraph 36(1)(a).
False or misleading representation in a material respect (Food)	Ferraro's Limited carrying on business as Super Valu (Trail, Rossland, Nelson and Castlegar, British Columbia)	Three charges were laid on January 24, 1983, under paragraph 36(1)(a).
Misleading price representation (Food items)	Ferraro's Limited carrying on business as Super Valu (Trail, Rossland, Nelson, Castlegar and Fernie, British Columbia)	Four charges were laid on January 24, 1983, under paragraph 36(1)(d).
False or misleading representation in a material respect (Gasoline additive)	WREM Marketing Inc. (Windsor, Ontario)	One charge was laid on February 7, 1983, under paragraph 36(1)(a).
Representation without proper test (Gasoline additive)	WREM Marketing Inc. (Windsor, Ontario)	Fourteen charges were laid on February 7, 1983, under paragraph 36(1)(b).
False or misleading representation in a material respect (Wood)	Fernand Morissette Inc. (Ancienne Lorette and Orsainville, Québec)	Twenty-one charges were laid on March 10, 1983, under paragraph 36(1)(a).
False or misleading representation in a material respect (Car rentals)	RMK Enterprises Ltd. carrying on business as Budget Rent-A-Car of Winnipeg, Budget Rent-A-Car Corp. and Budget Rent-A-Car (Winnipeg, Manitoba)	One charge was laid on April 26, 1983, under paragraph 36(1)(a).
False or misleading representation in a material respect (Cameras)	Westfair Foods Ltd. carrying on business as Super Valu (Winnipeg, Manitoba)	One charge was laid on April 26, 1983, under paragraph 36(1)(a).
Pyramid selling scheme (Cleaning products)	Sani-True Marketing Ltd. and John Paul Savard (Edmonton, Alberta)	Five charges were laid on April 27, 1983, under section 36.3.
False or misleading representation in a material respect (Silver dollars)	First Pioneer Petroleum Limited and First Pioneer Investments Limited (Hamilton, Ontario)	One charge was laid on May 10, 1983, under paragraph 36(1)(a) against First Pioneer Petroleum. On October 26, 1983, the charge was relaid, changing the name of the accused to First Pioneer Investments.
Pyramid selling scheme (Soap products)	Castle Marketing Inc. and Alvin James Lupryps (Winnipeg, Manitoba)	One charge was laid on May 18, 1983, under section 36.3. On October 21, 1983, both accused were convicted. The company was fined $10,000 and the individual was fined $2,000. Under appeal by accused.
False or misleading representation in a material respect (Body wrap treatment)	Brian John Renn and Chase Hair Transplant and Cosmetic Improvement Centre Ltd. (Toronto, Ontario)	Eleven charges were laid on May 24, 1983, under paragraph 36(1)(a). On October 27, 1983, the accused were convicted. The corporate accused was fined $300 on each charge and the individual was fined $200 on each charge. Under appeal by accused.
False or misleading representation in a material respect (Body wrap treatment)	Orlanda Rodrigues carrying on business as Cellulite Control Centre (Toronto, Ontario)	Fifteen charges were laid on May 24, 1983, under paragraph 36(1)(a).

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken
False or misleading representation in a material respect (Body wrap treatment)	Stanley Seckenski and Mary Seckenski carrying on business as Suddenly Slender & Wat-A-Tan (Toronto, Ontario)	Fifteen charges were laid on May 24, 1983, under paragraph 36(1)(a).
False or misleading representation in a material respect (Body wrap treatment)	Terrence Filion and 494920 Ontario Inc. carrying on business as Professional Inch Loss Clinic (Toronto, Ontario)	Six charges were laid on May 24, 1983, under paragraph 36(1)(a).
Representation without proper test (Body wrap treatment)	Brian John Renn and Chase Hair Transplant and Cosmetic Improvement Centre Ltd. (Toronto, Ontario)	Seven charges were laid on May 24, 1983, under paragraph 36(1)(b). On October 27, 1983, the accused were convicted. The corporate accused was fined $300 on each charge and the individual was fined $200 on each charge for a total fine of $3,500. Under appeal by accused.
Representation without proper test (Body wrap treatment)	Orlanda Rodrigues carrying on business as Cellulite Control Centre (Toronto, Ontario)	Four charges were laid on May 24, 1983, under paragraph 36(1)(b).
Representation without proper test (Body wrap treatment)	Stanley Seckenski and Mary Seckenski carrying on business as Suddenly Slender & Wat-A-Tan (Toronto, Ontario)	Two charges were laid on May 24, 1983, under paragraph 36(1)(b).
Representation without proper test (Body wrap treatment)	Terrence Filion and 494920 Ontario Inc. carrying on business as Professional Inch Loss Clinic (Toronto, Ontario)	Seven charges were laid on May 24, 1983, under paragraph 36(1)(b).
Representation without proper test (Engine additive)	Molyslip (Canada) Inc. (Toronto, Ontario)	One charge was laid on May 26, 1983, under paragraph 36(1)(b).
False or misleading representation in a material respect (Hardware items)	Westfair Foods Ltd. carrying on business as Super Valu (Winnipeg, Manitoba)	Nine charges were laid on May 27, 1983, under paragraph 36(1)(a).
False or misleading representation in a material respect (Encyclopedias)	Webster Publishing Company Limited and George William Hoskins (Vancouver, British Columbia)	One charge was laid on May 30, 1983, under paragraph 36(1)(a).
Pyramid selling scheme (Employment opportunity)	Agence de Promotion et de Courtage Tri-Action Inc., Jean-Pierre Boivin and Paul-André Boivin (Longueil, Québec)	One charge was laid on June 6, 1983, under section 36.3.
False or misleading representation in a material respect (Motorcoach tours)	Travelways Tours Ltd. (formerly Trailways of Canada Ltd.) (Markham, Ontario)	One charge was laid on June 7, 1983, under paragraph 36(1)(a).
False or misleading representation in a material respect (Body cream)	Perma Harvest Limited, Tulshi Prosad Sen and Margaret Ann Reed (Toronto, Ontario)	Eight charges were laid on June 8, 1983, under paragraph 36(1)(a).
Representation without proper test (Body cream)	Perma Harvest Limited, Tulshi Prosad Sen and Margaret Ann Reed (Toronto, Ontario)	Eight charges were laid on June 8, 1983, under paragraph 36(1)(b).
False or misleading representation in a material respect (Motor parts distributorship)	Motorpart Industries Inc. (Moncton, New Brunswick)	Seven charges were laid on June 14, 1983, under paragraph 36(1)(a).
False or misleading representation in a material respect (Furniture)	B & L Furniture & Appliances (Kitchener) Limited carrying on business as The Furniture Centre (Kitchener, Ontario)	Five charges were laid on June 21, 1983, under paragraph 36(1)(a). On January 27, 1984, the accused was acquitted. Under appeal by Crown.
Representation without proper test (Hydro-coil)	D.W.S. Energy Ltd. (Winnipeg, Manitoba)	One charge was laid on June 30, 1983, under paragraph 36(1)(b).

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken
False or misleading representation in a material respect (Chimney cleaners)	Webster Industries Ltd. and Gerald D. Webster (Saint John, New Brunswick)	One charge was laid on July 5, 1983, under paragraph 36(1)(a) and a second charge was laid on December 29, 1983.
Representation without proper test (Chimney cleaners)	Webster Industries Ltd. and Gerald D. Webster (Saint John, New Brunswick)	One charge was laid on July 5, 1983, under paragraph 36(1)(b) and a second charge was laid on December 29, 1983.
False or misleading representation in a material respect (Vacuum cleaners)	Hoover Canada Inc. (Toronto, Ontario)	One charge was laid on July 22, 1983, under paragraph 36(1)(a). On February 27, 1984, the accused pleaded guilty and was convicted and, on March 1, 1984, was fined $500. Under appeal by Crown.
False or misleading representation in a material respect (Vacuum cleaners)	Hoover Canada Inc. (Toronto, Ontario)	Two charges were laid on July 22, 1983, under paragraph 36(1)(a). On February 27, 1984, the accused pleaded guilty to one charge and was convicted and, on March 1, 1984, was fined $500. The remaining charge was withdrawn. Under appeal by Crown.
False or misleading representation in a material respect (Appliances)	Harold Grieve Jr., Allen Lastman, Maurice Bresgi, John Deyell, Stuart's Home Furnishing Franchise Inc., and Camco Inc., and Harold Grieve Jr. Enterprises Inc., Altarry Inc. and Ever'Rest Furniture Inc., carrying on business as Stuart's Furniture and Appliances (Toronto, Ontario)	One charge was laid on July 28, 1983, under paragraph 36(1)(a).
False or misleading representation in a material respect (Driving instruction)	Atlas Driving School Limited and Robert Maurice (Kitchener, Ontario)	Two charges were laid on August 19, 1983, under paragraph 36(1)(a).
False or misleading representation in a material respect (Clothing)	Boutique Chérie Canada Ltée (Montréal, Québec)	Four charges were laid on August 26, 1983, under paragraph 36(1)(a).
False or misleading representation in a material respect (Food items)	Westfair Foods Ltd. carrying on business as Super Valu (Winnipeg, Manitoba)	Two charges were laid on August 10, 1983, under paragraph 36(1)(a).
False or misleading representation in a material respect (Photo supplies)	Westfair Foods Ltd. carrying on business as Super Valu (Saskatoon, Saskatchewan)	Two charges were laid on August 30, 1983, under paragraph 36(1)(a). On February 16, 1984, the accused was acquitted. Under appeal by Crown.
False or misleading representation in a material respect (Ski boots)	André Lalonde Sports Inc. (Montréal, Québec)	Six charges were laid on September 6, 1983, under paragraph 36(1)(a).
False or misleading representation in a material respect (Microwave ovens)	Consumers' Gas Company Ltd. (Toronto, Ontario)	One charge was laid on September 14, 1983, under paragraph 36(1)(a).
False or misleading representation in a material respect (Chocolate bars)	Lowney Inc. (Toronto, Ontario)	One charge was laid on September 26, 1983, under paragraph 36(1)(a).
Promotional contest (Chocolate bars)	Lowney Inc. (Toronto, Ontario)	Four charges were laid on September 26, 1983, under section 37.2.
False or misleading representation in a material respect (Silver dollars)	Burke Direct Response Inc. carrying on business as Canadian Historic Mint, Delta Direct Response Group Inc. carrying on business as Royal Historic Mint, Solomon Burke and Steven Norman Burke (Willowdale, Ontario)	Five charges were laid on September 30, 1983, under paragraph 36(1)(a). All the accused were jointly charged in respect of two charges; Burke Direct Response and the two individuals were jointly charged in respect of two charges; and Delta Direct and S. N. Burke were jointly charged in respect of one charge.

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken
False or misleading representation in a material respect (Garage services)	Poliquin Service de Pneus Inc. (Montréal, Québec)	One charge was laid on October 17, 1983, under paragraph 36(1)(a).
Misleading price representation (Tires)	Poliquin Service de Pneus Inc. (Montréal, Québec)	One charge was laid on October 17, 1983, under paragraph 36(1)(d).
Representation without proper test (Tanning system)	GVD Enterprises Ltd. carrying on business as Jerry's UVA Suntanning (Winnipeg, Manitoba)	One charge was laid on November 1, 1983, under paragraph 36(1)(b).
False or misleading representation in a material respect (Dinnerware sets)	Charles D. Falk and A-1 Auctioneers and Evaluation Services Ltd. (Fredericton, New Brunswick)	Four charges were laid on November 8, 1983, under paragraph 36(1)(a).
False or misleading representation in a material respect (Televisions and video cassette recorders)	ABC Color & Sound Ltd. (Calgary, Alberta)	One charge was laid on November 18, 1983, under paragraph 36(1)(a).
Misleading price representation (Televisions and video cassette recorders)	ABC Color & Sound Ltd. (Calgary, Alberta)	Seven charges were laid on November 18, 1983, under paragraph 36(1)(d).
False or misleading representation in a material respect (Houses)	The Douglas MacDonald Development Corporation carrying on business as MacDonald Homes (Ottawa, Ontario)	Twenty charges were laid on November 24, 1983, under paragraph 36(1)(a).
Misleading price representation (Houses)	The Douglas MacDonald Development Corporation carrying on business as MacDonald Homes (Ottawa, Ontario)	Three charges were laid on November 24, 1983, under paragraph 36(1)(d).
False or misleading representation in a material respect (Paint stripper)	O.E. McIntyre Ltd./Ltée (Markham, Ontario)	Three charges were laid on November 29, 1983, under paragraph 36(1)(a).
Representation without proper test (Paint stripper)	O.E. McIntyre Ltd./Ltée (Markham, Ontario)	Three charges were laid on November 29, 1983, under paragraph 36(1)(b).
Representation without proper test (Cellulite treatment)	R.A.D Management Inc. carrying on business as Slim Tone Clinique (Winnipeg, Manitoba)	One charge was laid on December 1, 1983, under paragraph 36(1)(b).
False or misleading representation in a material respect (Gold)	Inch of Gold Distributors B.C. Ltd., Stephen William Zagozewski and Gregory Hubert Stevenson (Vancouver and Victoria, British Columbia)	Three charges were laid on December 6, 1983, under paragraph 36(1)(a). The corporate accused was charged solely with respect to one charge. The individuals were charged jointly with respect to one charge and G.H. Stevenson was also charged solely with respect to one charge.
False or misleading representation in a material respect (Transmissions)	Transmission Mario Inc. and Mario Labrecque (Montréal, Québec)	Four charges were laid on December 8, 1983, under paragraph 36(1)(a).
False or misleading representation in a material respect (Cabinets)	296434 Alberta Ltd. carrying on business as Ro-Nu Cabinet, Leslie Nichols and Kenneth Nichols (Calgary, Alberta)	Four charges were laid on December 14, 1983, under paragraph 36(1)(a).
False or misleading representation in a material respect (Furniture)	Ikea Limited/Ikea Ltée, Bjorn Bayley and McCann-Erickson Advertising of Canada Ltd. (Vancouver and Richmond, British Columbia)	Eight charges were laid on December 15, 1983, under paragraph 36(1)(a). All the accused were jointly charged with respect to six charges, and Ikea and B. Bayley were jointly charged with respect to two charges.
Non-availability (Furniture)	Ikea Limited/Ikea Ltée (Vancouver and Richmond, British Columbia)	One charge was laid on December 15, 1983, under section 37.

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken
False or misleading representation in a material respect (Televisions, video recorders and appliances)	Harold Grieve Jr., Allen Lastman and Stuart's Home Furnishing Franchise Inc., and Harold Grieve Jr. Enterprises Inc., Altarry Inc. and Ever-Rest Furniture Inc., carrying on business as Stuart's Furniture and Appliances (Toronto, Ontario)	One charge was laid on December 19, 1983, under paragraph 36(1)(a).
Pyramid selling scheme (Soap products)	Barry Luprype (Edmonton, Alberta)	One charge was laid on December 29, 1983, under section 36.3.
False or misleading representation in a material respect (Sale of distributorships)	C.H. Thomas Importers Incorporated and Doug Crabbe (Moncton, New Brunswick)	Two charges were laid on January 5, 1984, under paragraph 36(1)(a). The accused were charged solely with respect to each charge.
False or misleading representation in a material respect (Gas)	Bernard Teixeira carrying on business as Compagnie Internationale Globern (Valleyfield, Québec)	Three charges were laid on January 6, 1984, under paragraph 36(1)(a).
Representation without proper test (Gas-saving device)	Bernard Teixeira carrying on business as Compagnie Internationale Globern (Valleyfield, Québec)	Three charges were laid on January 6, 1984, under paragraph 36(1)(b).
False or misleading representation in a material respect (Grocery items)	Dominion Stores Limited carrying on business as Best For Less (Douglastown, New Brunswick)	Ten charges were laid on January 9, 1984, under paragraph 36(1)(a).
Representation without proper test (Water purifier)	J. Jeffrey Wood carrying on business as Aqua Pure of Markham (Toronto, Ontario)	Four charges were laid on January 12, 1984, under paragraph 36(1)(b).
Promotional contest (Greek Festival)	Tom Kourtesis and The Greek Productions Inc. (Toronto, Ontario)	Three charges were laid on January 13, 1984, under section 37.2.
False or misleading representation in a material respect (Carpeting)	Alexanian and Sons Limited (Hamilton, Ontario)	Two charges were laid on January 16, 1984, under paragraph 36(1)(a).
Misleading price representation (Office furniture)	Equipements de Bureau Jupiter Inc. (Montréal, Québec)	Three charges were laid on January 19, 1984, under paragraph 36(1)(d).
False or misleading representation in a material respect (Sundry items)	Lycor Import Export Ltd./Ltée (Dorval, Québec)	One charge was laid on January 23, 1984, under paragraph 36(1)(a).
False or misleading representation in a material respect (Gas-saving device)	Whitworth Marine Limited carrying on business as Soni-jet Fuel Systems and Michael Patrick McLean carrying on business as Gas-Wise Marketing Co. (London, Ontario)	Six charges were laid on January 23, 1984, under paragraph 36(1)(a) against the individual. An additional charge under that paragraph was laid against the corporate accused on January 24, 1984.
Misleading testimonial or test (Gas-saving device)	Michael Patrick McLean carrying on business as Gas-Wise Marketing Co. (London, Ontario)	One charge was laid on January 23, 1984, under section 36.1.
Representation without proper test (Gas-saving device)	Whitworth Marine Limited carrying on business as Soni-jet Fuel Systems and Michael Patrick McLean carrying on business as Gas-Wise Marketing Co. (London, Ontario)	Six charges were laid on January 23, 1984, under paragraph 36(1)(b) against the individual. An additional charge under that paragraph was laid against the corporate accused on January 24, 1984.
False or misleading representation in a material respect (Car covers)	O.E. McIntyre Ltd./Ltée (Vancouver, British Columbia)	One charge was laid on January 25, 1984, under paragraph 36(1)(a).
Representation without proper test (Gas-saving device)	Linda Hoogmoed and Dirk Jan Hoogmoed carrying on business as Adonis Marketing Co. (Winnipeg, Manitoba)	One charge was laid on February 3, 1984, under paragraph 36(1)(b).

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken
False or misleading representation in a material respect (Pilot training course)	Ian Colin Bodner and Lakehead Helicopter Services Ltd. (Thunder Bay, Ontario)	Six charges were laid on February 8, 1984, under paragraph 36(1)(a).
False or misleading representation in a material respect (Food and sundry items)	Les Aliments Cascades Inc. and Provigo (Distributions) Inc. (Montréal, Québec)	Seven charges were laid on February 8, 1984, under paragraph 36(1)(a).
Sale above advertised price (Food and sundry items)	Les Aliments Cascades Inc. and Provigo (Distributions) Inc. (Montréal, Québec)	Ten charges were laid on February 8, 1984, under section 37.1.
False or misleading representation in a material respect (Fabrics)	Young Equities Ltd. operating as Fashion Fabric Centre (Lacombe, Alberta)	One charge was laid on February 9, 1984, under paragraph 36(1)(a).
False or misleading representation in a material respect (Furniture)	Nefco Furniture Ltd. carrying on business as The Penthouse Interiors (Winnipeg, Manitoba)	One charge was laid on February 10, 1984, under paragraph 36(1)(a).
Representation without proper test (Air cleaner)	Biotech Marketing Inc./ Entreprise de Marketing Biotech Inc. (Ottawa, Ontario)	Two charges were laid on February 22, 1984, under paragraph 36(1)(b).
False or misleading representation in a material respect (Envelope stuffing scheme)	John W. Martin carrying on business as Purple Martin Holdings (Calgary, Alberta)	One charge was laid on February 24, 1984, under paragraph 36(1)(a).
False or misleading representation in a material respect (Automobiles)	Heritage Ford Sales Limited (Toronto, Ontario)	Two charges were laid on February 27, 1984, under paragraph 36(1)(a).
False or misleading representation in a material respect (Cars)	Jaguar Rover Triumph Canada Inc. (Bramalea, Ontario)	Two charges were laid on February 27, 1984, under paragraph 36(1)(a).
False or misleading representation in a material respect (Stereo equipment)	Nouveautés Capital Ltée/Capital Novelties Ltd. (Montréal, Québec)	Ten charges were laid on February 27, 1984, under paragraph 36(1)(a).
Misleading price representation (Stereo equipment)	Nouveautés Capital Ltée/Capital Novelties Ltd. (Montréal, Québec)	Ten charges were laid on February 27, 1984, under paragraph 36(1)(d).
Non-availability (Amplifiers)	Tandy Electronics Limited carrying on business as Radio Shack (Barrie, Ontario)	Two charges were laid on February 27, 1984, under section 37.
False or misleading representation in a material respect (Furniture)	Best Deal Factory Furniture Sales Limited and Joe Capone (Toronto, Ontario)	Five charges were laid on March 1, 1984, under paragraph 36(1)(a).
False or misleading representation in a material respect (Quartz stones)	Ragnar Jewellers Ltd. carrying on business as Ragnar and Ragnar Bertolaso (Vancouver and Richmond, British Columbia)	Five charges were laid on March 9, 1984, under paragraph 36(1)(a).
Sale above advertised price (Sundry items)	Marché G. P. Inc. (Rimouski, Québec)	Twenty-eight charges were laid on March 9, 1984, under section 37.1.
False or misleading representation in a material respect (Fireplaces)	Edmonton Fresh Air Fireplaces Ltd. (Edmonton, Alberta)	One charge was laid on March 12, 1984, under paragraph 36(1)(a).
False or misleading representation in a material respect (Drug-store items)	Alain Haddad carrying on business as Pharmacie Jean Coutu (A. Haddad) Enr. (Sherbrooke, Québec)	Two charges were laid on March 14, 1984, under paragraph 36(1)(a).
False or misleading representation in a material respect (Kitchen cabinets)	Hawthorne Distributors Kitchen and Bath Cabinets Limited carrying on business as Hawthorne Kitchen Designs (Ottawa, Ontario)	Two charges were laid on March 16, 1984, under paragraph 36(1)(a).

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken
Misleading price representation (Kitchen cabinets)	Hawthorne Distributors Kitchen and Bath Cabinets Limited carrying on business as Hawthorne Kitchen Designs (Ottawa, Ontario)	Two charges were laid on March 16, 1984, under paragraph 36(1)(d).
False or misleading representation in a material respect (Video cassette recorders)	Al Utronki Appliance & T.V. Centre Ltd. (Renfrew, Ontario)	One charge was laid on March 29, 1984, under paragraph 36(1)(a).
Misleading price representation (Video cassette recorders)	Al Utronki Appliance & T.V. Centre Ltd. (Renfrew, Ontario)	One charge was laid on March 29, 1984, under paragraph 36(1)(d).
False or misleading representation in a material respect (Televisions)	Danforth Radio Company Ltd. and ½ Price Video Audio Wholesale Distributors Ltd. (Markham and Toronto, Ontario)	Seven charges were laid on March 30, 1984, under paragraph 36(1)(a).
Promotional contest (Condominium units)	Allan Rose and Cranberry Timmhare Inc. (Toronto, Ontario)	One charge was laid on March 30, 1984, under section 37.2.
Sale above advertised price (Televisions and converters)	Danforth Radio Company Ltd. and ½ Price Video Audio Wholesale Distributors Ltd. (Markham, Ontario)	Two charges were laid on March 30, 1984, under section 37.1.

APPENDIX V

Table of Cases

The following is a list of recent case citations relating to Canadian anticombines legislation. Cases relating to misleading advertising and deceptive marketing practices and constitutional cases, dealing with the validity of the legislation and related civil, administrative or procedural matters of interest, are listed under separate headings.

Re Travelways School Transit Ltd. et al. and the Queen (1980), 52 C.C.C. (2d) 399; 52 C.P.R. (2d) 63. (Motion to quash committal)

Regina v. Charterways Transportation Ltd. et al. (1981), 32 O.R. (2d) 719; 57 C.P.R. (2d) 230; 123 D.L.R. (3d) 159. (Trial)

Regina v. Lorne Wilson Transportation Ltd. and Travelways School Transit Ltd. (1982), 40 O.R. (2d) 86; 69 C.C.C. (2d) 94; 67 C.P.R. (2d) 188; 138 D.L.R. (3d) 690. (Appeal)

Regina v. Browning-Ferris Industries of Winnipeg (1974) Ltd., Acme Sanitation Services Ltd. (1981), 56 C.P.R. (2d) 257.

Regina v. A. & M. Records of Canada Ltd. (1981), 51 C.P.R. (2d) 225.

Regina v. Philips Electronics Ltd. — Philips Electronique Ltée (1981), 30 O.R. (2d) 129; 55 C.C.C. (2d) 312; 53 C.P.R. (2d) 74. (Appeal)

Regina v. Philips Electronics Ltd., [1981] 2 S.C.R. 264; 62 C.C.C. (2d) 384; 59 C.P.R. (2d) 212; 126 D.L.R. (3d) 767. (Supreme Court of Canada)

Regina v. British Columbia Television Broadcasting System Ltd. et al. (1981), 52 C.P.R. (2d) 47.

Regina v. Church and Co. (Canada) Limited (1981), 52 C.P.R. (2d) 21.

Regina v. H.D. Lee of Canada Ltd. (1981), 57 C.P.R. (2d) 186; [1981] C.S.P. 1003. (Trial)

Regina v. H.D. Lee of Canada Ltd. (1982), 62 C.P.R. (2d) 77. (Sentence)

Regina v. Consumers Glass Co. Ltd. et al. (1982), 33 O.R. (2d) 228; 57 C.P.R. (2d) 1; 124 D.L.R. (3d) 274.

Regina v. Agricultural Chemicals Limited (1981), 60 C.P.R. (2d) 204.

Regina v. Alan D. Schelew et al. (1982), 38 N.B.R. (2d) 340; 63 C.P.R. (2d) 140. (Trial)

Regina v. Schelew (1984), 78 C.P.R. (2d) 102. (Appeal)

Regina v. Koss Ltd. (1982), 65 C.P.R. (2d) 95.

Regina v. Cluett, Peabody Canada Inc. (1982), 64 C.P.R. (2d) 30. (Trial)

Regina v. Cluett, Peabody Canada Inc. (1983), 71 C.P.R. (2d) 280n. (Appeal)

Mediacom Industries Inc. — Les Entreprises Mediacom et al. v. The Queen; Hoal Investments et al. v. The Queen (1982), 36 O.R. (2d) 281; 63 C.P.R. (2d) 75. (Motion to quash Information)

Mediacom Industries Inc. — Les Entreprises Mediacom et al. v. The Queen (1982), 37 O.R. (2d) 91; 68 C.P.R. (2d) 285n. (Ontario Court of Appeal)

Regina v. Uranium Canada Ltd./Ltée; Regina v. Eldorado Nuclear Ltd. — Eldorado Nucléaire Ltée (1982), 38 O.R. (2d) 130; 17 B.L.R. 275; 138 D.L.R. (3d) 626; 66 C.P.R. (2d) 190.

Regina v. Uranium Canada Ltd./Ltée; Regina v. Eldorado Nuclear Ltd. — Eldorado Nucléaire Ltée (1982), 39 O.R. (2d) 474; 68 C.C.C. (2d) 200; 66 C.P.R. (2d) 207.

Regina v. Uranium Canada Ltd./Ltée; Regina v. Eldorado Nuclear Ltd. — Eldorado Nucléaire Ltée (1983), 50 N.R. 120; 8 C.C.C. (3d) 449; 4 D.L.R. (4th) 193. (Supreme Court of Canada)

Regina v. R.L. Thorpe Sales Ltd. (1983), 49 A.R. 354. (Appeal)

Misleading Advertising and Deceptive Marketing Practices

Regina v. Scotia Chevrolet Oldsmobile Limited (1980), 44 N.S.R. (2d) 410; 62 C.P.R. (2d) 172. (Appeal)

Regina v. Wonder Steel Building (Central) Limited and Lyle Boland (1981), 59 C.C.C. (2d) 372; 56 C.P.R. (2d) 103.

Regina v. Southdown Builders Limited (1981), 57 C.P.R. (2d) 56.

Regina v. Shaklee Canada Inc., [1981] 2 F.C. 730; 55 C.P.R. (2d) 243.

Regina v. 359286 Ontario Ltd. (1981), 61 C.C.C. (2d) 383; 58 C.P.R. (2d) 169.

Regina v. Robin Hood Multifoods Ltd. (1982), 59 C.P.R. (2d) 57. (Appeal)

Regina v. Robin Hood Multifoods Ltd. (1982), 65 C.P.R. (2d) 66. (Leave to appeal refused)

Regina v. Dominion Stores Ltd. (1982), 59 C.P.R. (2d) 90.

Regina v. World Book Childcraft of Canada Ltd. (1981), 31 Nfld. and P.E.I.R. 69; 62 C.P.R. (2d) 70.

Regina v. Miracle Mart Inc., [1981] C.S.P. 1018.

Regina v. Miracle Mart Inc., [1982] C.S. 342; 68 C.C.C. (2d) 242; 67 C.P.R. (2d) 80.

Regina v. Miller's T.V. Ltd. (1982), 19 Man. R. (2d) 259.

Regina v. Nova Motors Limited (1982), 51 N.S.R. (2d) 273.

Regina v. K.B.M. Electropedic Adjustable Beds (1983), 50 A.R. 76; 75 C.P.R. (2d) 58.

Constitutional, Administrative and Other Related Cases

Constitutional Cases

In the Matter of The Board of Commerce Act and The Combines and Fair Prices Act of 1919 (1920), 60 S.C.R. 456.

In Re the Board of Commerce Act, 1919, and The Combines and Fair Prices Act, 1919, [1922] 1 A.C. 191; (1921), 60 D.L.R. 513; [1922] 1 W.W.R. 20.

Re Combines Investigation Act and S. 498 of the Criminal Code, [1929] S.C.R. 409; 52 C.C.C. 223; 2 D.L.R. 802.

Proprietary Articles Trade Association v. The Attorney-General for Canada, [1931] A.C. 310; 55 C.C.C. 241; 2 D.L.R. 1; 1 W.W.R. 552.

Reference re Section 498A of the Criminal Code, [1936] S.C.R. 363; 3 D.L.R. 593.

Attorney-General for British Columbia v. Attorney-General for Canada et al. (Reference re Section 498A of the Criminal Code), [1937] A.C. 368; 1 D.L.R. 688; 1 W.W.R. 317.

Reference re Dominion Trade and Industry Commission Act, 1935, [1936] S.C.R. 379; 3 D.L.R. 607.

Regina v. Goodyear Tire & Rubber Co. of Canada Ltd. et al., [1953] O.R. 856; O.W.N. 828; 17 C.R. 252; 107 C.C.C. 88; 19 C.P.R. 75. (Trial)

Regina v. Goodyear Tire & Rubber Co. of Canada Ltd. et al., [1954] O.R. 377; O.W.N. 436; 18 C.R. 245; 108 C.C.C. 321; 4 D.L.R. 61. (Appeal)

Goodyear Tire & Rubber Co. of Canada Ltd. et al. v. The Queen, [1956] S.C.R. 303; 114 C.C.C. 380; 26 C.P.R. 1; 2 D.L.R. (2d) 11.

Regina v. Campbell, [1964] 2 O.R. 487; 46 D.L.R. (2d) 83; 3 C.C.C. 112 (Appeal); 50 C.P.R. 142 (includes appeal to Supreme Court of Canada).

Regina v. Campbell, [1966] 4 C.C.C. 333; 58 D.L.R. (2d) 673. (Supreme Court of Canada)

Law Society of British Columbia et al. v. Attorney General of Canada et al., [1978] 6 W.W.R. 289; 92 D.L.R. (3d) 53.

Jabour v. Law Society of British Columbia and Rankin; Law Society of British Columbia and McCallum v. Attorney-General of Canada et al., [1979] 4 W.W.R. 385.

Law Society of British Columbia and Victor McCallum v. Attorney General of Canada et al. (1981), 50 C.P.R. (2d) 34; [1980] 4 W.W.R. 6; 108 D.L.R. (3d) 753.

Jabour v. Law Society of British Columbia et al., Law Society of British Columbia et al. v. Attorney General of Canada et al. (1981), 115 D.L.R. (3d) 549; [1981] 2 W.W.R. 159; 53 C.P.R. (2d) 87; 24 B.C.L.R. 1.

Attorney General of Canada et al. v. Law Society of British Columbia et al; Jabour v. Law Society of British Columbia et al. [1982] 5 W.W.R. 289; 37 B.C.L.R. 145; 66 C.P.R. (2d) 1. (Supreme Court of Canada)

Rocois Construction Inc. v. Québec Ready Mix Inc. et al., [1980] 1 F.C. 184.

Seiko Time Canada Ltd. v. Consumers Distributing Company Limited (1981), 50 C.P.R. (2d) 147.

Henuset Bros. Ltd. v. Syncrude Canada Ltd. et al. (1980), 114 D.L.R. (3d) 300; 52 C.P.R. (2d) 173.

Canadian Pacific Transport Company Limited et al. v. Alberta Provincial Court and Attorney General of Canada; R. v. Alltrans Express Ltd. et al. (1982), 32 A.R. 422; 119 D.L.R. (3d) 547.

Canadian National Transportation Limited et al. v. Alberta Provincial Court and Attorney General of Canada; R. v. Alltrans Express Ltd. et al. (1982), 35 A.R. 132; [1982] 2 W.W.R. 673; 63 C.P.R. (2d) 113; 135 D.L.R. (3d) 89.

Attorney General of Canada v. C.N. Transport Ltd. et al.; Attorney General of Canada v. C.P. Transport Ltd. et al. (1983), 49 N.R. 241; 76 C.P.R. (2d) 1; 49 A.R. 39; 3 D.L.R. (4th) 16. (Supreme Court of Canada)

Regina v. Hoffmann-LaRoche Ltd. (Nos. 1 and 2) (1981), 33 O.R. (2d) 694; 62 C.C.C. (2d) 118; 58 C.P.R. (2d) 1; 125 D.L.R. (3d) 607; 15 B.L.R. 217.

Southam Inc. v. Director of Investigation and Research of the Combines Investigation Branch, [1982] 4 W.W.R. 673; 20 Alta L.R. (2d) 114; 68 C.C.C. (2d) 356; 136 D.L.R. (3d) 133; 65 C.P.R. (2d) 80. (Application for interim injunction refused)

Southam Inc. v. Director of Investigation and Research of the Combines Investigation Branch (1982), 65 C.P.R. (2d) 116. (Appeal re interim injunction)

Southam Inc. v. Hunter, Director of Investigation and Research of the Combines Investigation Branch, et al., [1983] 3 W.W.R. 385; 3 C.C.C. (3d) 497; 72 C.P.R. (2d) 145; 32 C.R. (3d) 141; 24 Alta L.R. (2d) 307; 42 A.R. 93; 147 D.L.R. (3d) 420. (Alberta Court of Appeal re validity of section 10)

PPG Industries Canada Ltd. v. Attorney General of Canada (1982), 40 B.C.L.R. 299; 67 C.P.R. (2d) 192.

PPG Industries Canada Ltd. v. Attorney General of Canada (1983), 42 B.C.L.R. 334; 3 C.C.C. (3d) 97; 71 C.P.R. (2d) 56; 146 D.L.R. (3d) 261.

Helix Investments Ltd. and Helix Shipping Limited v. Hunter et al. (1983), 73 C.P.R. (2d) 55.

Thomson Newspapers Ltd. v. Hunter, Director of Investigation and Research (1983), 73 C.P.R. (2d) 67.

A.C.L. Canada Inc. v. Hunter et al. (1983), 8 C.C.C. (3d) 190; 76 C.P.R. (2d) 285; 3 D.L.R. (4th) 336.

Regina v. Burns Foods Ltd. et al. (1983), 76 C.P.R. (2d) 223.

R.L. Crain et al. v. Couture and R.T.P.C. et al. (1983), 6 D.L.R. (4th) 478.

Administrative and Other Related Cases

Stevens et al. v. Restrictive Trade Practices Commission, [1979] 2 F.C. 159. (Application for Writ of Prohibition and consideration of sections 4 and 17 of the Act)

Couture, Restrictive Trade Practices Commission v. Stevens, Hewison et al. (1979), 50 C.C.C. (2d) 454; [1980] 2 W.W.R. 136; 17 B.C.L.R. 124; 54 C.P.R. (2d) 62; 105 D.L.R. (3d) 556. (Application to certify punishment for contempt)

Couture v. Hewison, Stevens and Nichol, [1983] 2 W.W.R. 267; 41 B.C.L.R. 233; 3 C.C.C. (3d) 52; 145 D.L.R. (3d) 55; 71 C.P.R. (2d) 189. (Appeal of refusal to certify punishment for contempt)

Petrofina Canada Ltd. v. The Restrictive Trade Practices Commission et al., [1979] 2 F.C. 501, 26 N.R. 536. (Application re judicial review of orders under sections 9 and 10 of the Act)

Petrofina Canada Ltd. v. The Restrictive Trade Practices Commission et al., [1980] 2 F.C. 386; 46 C.P.R. (2d) 1; 107 D.L.R. (3d) 319. (Application to set aside certificates issued by RTPC under sections 9 and 10)

Petrofina Canada Inc. v. Attorney General of Canada et al. (1980), 47 C.P.R. (2d) 201. (Application to stay RTPC proceedings)

Bombardier Ltd. v. Restrictive Trade Practices Commission (1980), 48 C.P.R. (2d) 248; 113 D.L.R. (3d) 295.

Director of Investigation and Research v. Bombardier Ltd. (1981), 57 C.P.R. (2d) 216. (Proceedings before RTPC)

John McManus and Atomic Energy Control Board v. The Restrictive Trade Practices Commission et al., [1980] 2 F.C. 278; 49 C.P.R. (2d) 1. (Application re judicial review of order under section 17 of the Act)

Irvine et al. v. Restrictive Trade Practices Commission et al. (1981), 56 C.P.R. (2d) 83. (Review of order under section 17 of the Act)

Irvine et al. v. Restrictive Trade Practices Commission et al. (1981), 65 C.C.C. (2d) 108; 62 C.P.R. (2d) 1.

Director of Investigation and Research v. B.B.M. Bureau of Measurement (1982), 60 C.P.R. 26. (Proceedings before RTPC)

B.B.M. Bureau of Measurement v. Director of Investigation and Research (1982), 63 C.P.R. (2d) 63. (Application to intervene)

B.B.M. Bureau of Measurement v. Director of Investigation and Research (1982), 69 C.P.R. (2d) 286. (Application to stay order)

Chambre des Notaires du Québec v. R.T.P.C. and Director of Investigation and Research, [1983] 1 F.C. 727; 76 C.P.R. (2d) 211.

Warner Bros. Distributing (Canada) Ltd. v. R.T.P.C. (1983), 71 C.P.R. (2d) 206. (Application for prohibition)

Canadian Federation of Independent Petroleum Marketers v. R.T.P.C. (1983), 70 C.P.R. (2d) 151.

R.T.P.C. and Stoner v. Director of Investigation and Research, [1983] 2 F.C. 222.

Ziegler v. Hunter, Director of Investigation and Research (1983), 75 C.P.R. (2d) 222. (Application for prohibition)

Ziegler et al. v. Hunter (1983), 75 C.P.R. (2d) 163. (Application to suspend order)

Ziegler et al. v. Hunter (1983), 75 C.P.R. (2d) 246n. (Appeal)

Director of Investigation and Research v. Ziegler (1983), 51 N.R. 1.

APPENDIX VI

Recent Publications of the Bureau of Competition Policy

Studies

Private Trucking: Analysis and Implications

Shipping Conferences: Survey of Users' Views

Other Publications

Misleading Advertising Bulletin (Published quarterly)

How to Avoid Misleading Advertising: Guidelines

Annual Report [of the] Director of Investigation and Research, Combines Investigation Act (for previous fiscal years)

APPENDIX VII

Administration and Organization of the Bureau of Competition Policy

1. Staff

Lawson A.W. Hunter is the Director of Investigation and Research, and Assistant Deputy Minister, Competition Policy. J. Claude Thivierge is the Deputy Director, Legal, and Mel S. Cappe is the Deputy Director, Economics.

There are five enforcement Branches, each under a Director, as follows:

Resources	M.P. O'Farrell
Services	W.F. Lindsay
Manufacturing	G.D. Orr
Regulated Sector	R. Atkinson
Marketing Practices	K.G. Decker

The Economic Analysis and Policy Evaluation Branch provides comprehensive research support to the Bureau and has the central role in strategic planning and the general development of competition policy. M. Andrieu is the Director, Economic Analysis and Policy Evaluation.

A new functional unit, the Office of Enforcement Operations, was established on April 1, 1983. I. Nielsen-Jones is the Coordinator of Enforcement Operations.

The Management Services Section provides managerial support in planning, financial, personnel and administrative matters. J.J.D. Read is the Coordinator.

The authorized Bureau strength for 1983-84 was 247.5 person-years. Of these, 197.5 are in headquarters. The remaining 50 person-years comprise the field element of the Marketing Practices Branch. Under the direction of six regional managers, 44 investigators and support staff are located in Vancouver, Edmonton, Calgary, Regina, Winnipeg, London, Toronto, Hull, Montréal, Québec City, Moncton, Dartmouth and St. John's.

The Director of Investigation and Research also received assistance from members of the departmental Legal Branch, who are lawyers from the Department of Justice. The Department of Justice is responsible for prosecutions and other legal proceedings under the Act.

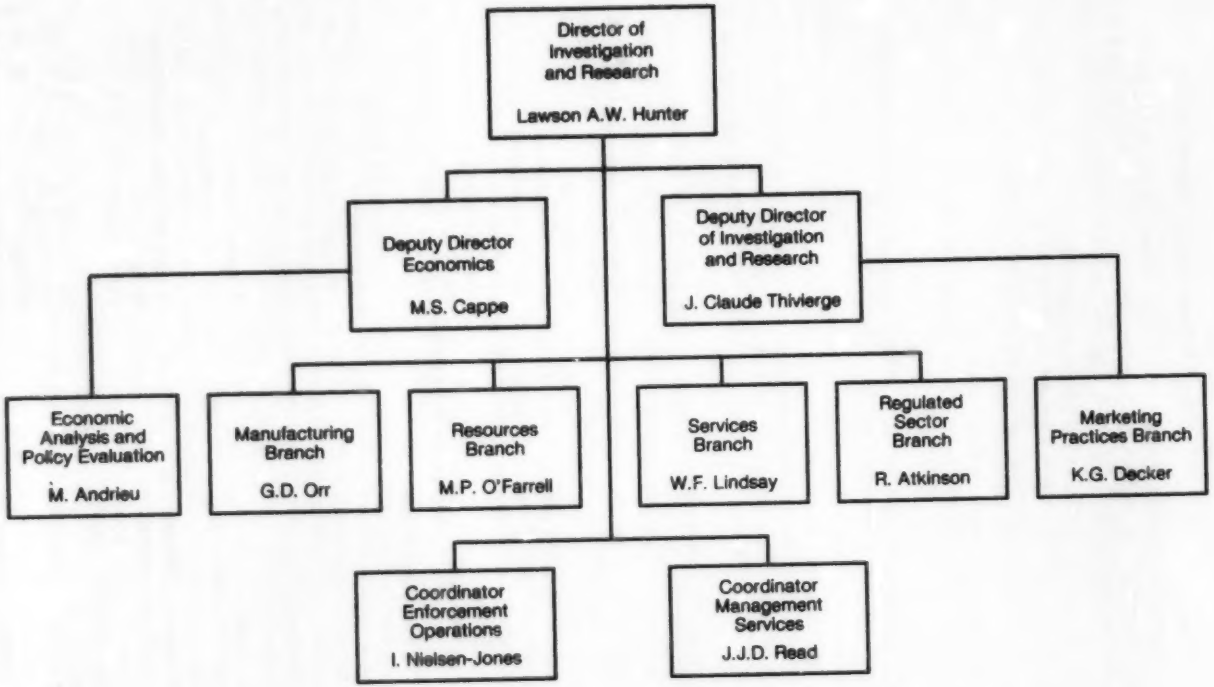
2. Finance

In 1983-84 the operating budget for the administration of the Bureau of Competition Policy was $11,832,000. Supplementary estimates to fund the Petroleum Inquiry, together with departmental internal reallocation of funds, increased the budget to $12,900,000 for the year.

The Bureau's major expenditure during the year was $8,647,000 for staff salaries and benefits, reflecting the fact that the Bureau is highly labour intensive. The Bureau incurred $2,005,775 in legal fees and disbursements in relation to its activities under the Act.

The Director is also charged with the administrative responsibility for collecting fines imposed by the courts. During 1983-84, a total of 177 fines were collected, with a value of $2,331,713, which was credited to the Government's Consolidated Revenue Fund.

DETAILS OF ORGANIZATION
BUREAU OF COMPETITION POLICY



APPENDIX VIII

Regional and District Offices

Any person wishing to obtain general information on the Act or an opinion under the program of compliance, or wishing to inform the Director of Investigation and Research of any matter that comes within the purview of the Act, can communicate with:

Office of Enforcement Operations
Bureau of Competition Policy
Consumer and Corporate Affairs Canada
50 Victoria Street
Hull, Québec
K1A 0C9
Tel: 994-0798

For any matters pertaining to marketing practices, such persons may also communicate with the regional offices listed below:

1400-800 Burrard Street
VANCOUVER, British Columbia
V6Z 2H8
Tel: 666-5000

2929 - 5th Avenue N.E.
Bag 60, Station "J"
CALGARY, Alberta
T2A 6T8
Tel: 231-5608

260 St. Mary Avenue
Room 201, 2nd Floor
WINNIPEG, Manitoba
R3C 0M6
Tel: 949-5567

781 Richmond Street
LONDON, Ontario
N6A 3H4
Tel: 679-4032

50 Victoria Street
HULL, Québec
K1A 0C9
Tel: 997-4282

Guy Favreau Complex
200 Dorchester Blvd. W.
Suite 534, East Tower
MONTRÉAL, Québec
H2Z 1X4
Tel: 283-4571

1222 Main Street
3rd Floor
MONCTON, New Brunswick
E1C 1H6
Tel: 388-6633

Oliver Building
10225 - 100th Avenue
1st Floor
EDMONTON, Alberta
T5J 0A1
Tel: 420-2489

2212 Scarth Street
REGINA, Saskatchewan
S4P 2J6
Tel: 359-5387

4900 Yonge Street
6th Floor
WILLOWDALE, Ontario
M2N 6B8
Tel: 224-4065

410 Charest Blvd. East
Room 400
QUÉBEC, Québec
G1K 8G3
Tel: 694-3939

Windmill Place
1000 Windmill Road
Suite 1
DARTMOUTH, Nova Scotia
B3M 1L7
Tel: 426-6080

Sir Humphrey Gilbert Building
165 Duckworth Street
5th floor
ST. JOHN'S, Newfoundland
A1C 1G4
Tel: 737-5518

APPENDIX IX

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA AS TO NOTIFICATION, CONSULTATION AND COOPERATION WITH RESPECT TO THE APPLICATION OF NATIONAL ANTITRUST LAWS

The Government of Canada and the Government of the United States of America:

Recognizing that the close links between the economies of the two countries may lead to situations in which the application of the antitrust laws of one Party conflicts with the interests of the other Party;

Reaffirming the importance that each Party attaches to the effective enforcement of its own antitrust laws;

Acknowledging that there are differences between the Parties on the appropriate application of national antitrust laws to conduct occurring wholly or partly outside the territory of the applying Party, and on the appropriate use of investigative measures to obtain documents or information from the territory of the other Party, including differences on the application or applicability of principles of international law in these situations; and that the Parties reserve their respective positions in this regard;

Noting that the application of United States antitrust laws in the past occasionally has conflicted with Canadian policies and has raised jurisdictional issues in Canada;

Noting the OECD Recommendation of 1979 concerning cooperation in the control of restrictive business practices, the 1959 bilateral Understanding announced by Minister of Justice Fulton and Attorney General Rogers and its renewal and expansion in 1969 by Minister of Consumer and Corporate Affairs Basford and Attorney General Mitchell, and the principles of guidance to officials agreed to in 1977 by the Canadian Secretary of State for External Affairs and Ministers of Justice and Consumer and Corporate Affairs and by the United States Attorney General;

Have decided to act in accordance with the following Understanding.

1. *Purpose*

This Memorandum of Understanding outlines arrangements for notification and consultation between the Parties with respect to the application of their respective antitrust laws, with the purpose of avoiding or moderating conflicts of interests and policies. The Understanding also establishes procedures for closer cooperation in order to enhance the substantial benefits which both derive from mutual assistance in the enforcement of their antitrust laws.

2. *Notification in General*

(1) The Parties will notify each other whenever they become aware that their antitrust investigations or proceedings, or actions relating to antitrust investigations or proceedings of the other Party, involve national interests of the other or require the seeking of information located in the territory of the other.

(2) Situations requiring notification will include those in which:

(i) An antitrust investigation is likely to inquire into activity carried out wholly or in part in the territory of the other Party;

(ii) An antitrust investigation is likely to inquire into any activity carried out wholly or in part outside the territory of the investigating Party, and there is reason to believe that the activity is required, encouraged or approved by the other Party;

(iii) It is expected that information to be sought is located in the territory of the other Party;

(iv) Information is sought to be gathered by the personal visit of antitrust officials to the territory of the other Party;

(v) An investigation, whether or not previously notified, may reasonably be expected to lead to a prosecution or other enforcement action likely to affect a national interest of the other Party.

(3) After an initial notification of an investigation, subsequent notification is not required of each request for information or personal visit made in the course of such investigation unless new issues bearing upon national interests are raised or unless the recipient Party indicates otherwise.

(4) Notification will be given by delivery in writing by the Embassy of the notifying Party in the capital of the recipient Party. Notification by the United States will be given to the Department of External Affairs. Notification by Canada will be given to the Department of State. Where time is of the essence, initial notification may be provided by telephone communication between the Parties' antitrust authorities, with confirmation made promptly thereafter in writing by the above-stated channels. The information conveyed in the notification will be provided concurrently to the concerned antitrust authorities of the recipient Party by the investigating agency of the notifying Party.

(5) Notification will be given at least ten business days prior to the initiation of the relevant action. When ten business days notice cannot be given, it will be provided as promptly as circumstances permit.

(6) The content of the notification will be sufficiently detailed to permit evaluation by the recipient Party of any effects on its national interests.

(7) In the case of mergers or acquisitions routinely reported to antitrust authorities, notification, if required by paragraph 2(1), will only be provided to the other Party at the time the antitrust authorities decide to request additional information and in any event in advance of enforcement action.

3. *Notification of Business Reviews, Advisory Opinions and Compliance Procedures*

When an antitrust authority receives a request to state current enforcement intentions as to proposed action, and such statements will ultimately be published, notification will be made to the other Party if the proposed response contemplates enforcement action that may affect a national interest of the other or if, in analysing such a request, it is expected that information located in the territory of the other may be required. Where possible, notification will be given ten business days prior to the issuance of the response to the request.

4. *Consultation*

Either Party may request consultations when it believes that an antitrust investigation, proceeding (including for the purposes of this paragraph a private suit pursuant to the antitrust laws of either Party), business review, advisory opinion or compliance procedure, or action relating to an antitrust investigation or proceeding, is likely to affect its significant national interests or require the seeking of information from its territory. Such requests will be made and honoured promptly.

5. *Notification and Consultation where One Party Expects to Take Action to Limit the Other Party's Access to Information*

If one Party seeks to obtain information located within the territory of the other in furtherance of an antitrust investigation or inquiry, the other Party will not normally discourage a response. If a Party finds that access to information within its territory by the investigating Party is contrary to a significant national interest, any decision or consequential action relating to access by the investigating Party to such information will normally be made only after notification and consultations within the framework of, and after taking account of the purposes of this Understanding. Where, because of an exceptional circumstance, immediate action must be taken, an opportunity for consultation will be provided immediately thereafter.

6. *Consideration of the Other Party's Significant Interest*

Each Party will give careful consideration to the significant national interests of the other at all stages of an antitrust investigation, inquiry or prosecution. The significant national interests of a Party may be general or specific in nature depending on the activity in question and may vary in significance according to the importance of the goals of the relevant government policies and the extent to which achievement of those goals may be impaired by acceding to the expressed interests of the other Party. While a significant national interest may exist even in the absence of any governmental connection with the activity in question, it is recognized that such interests would normally be reflected in antecedent laws, decisions or statements of policy by the competent authorities.

7. *Elimination or Minimization of Conflicts*

(1) Each Party will normally refrain from initiating or continuing particular elements of any investigative or enforcement procedures, to the extent they affect a national interest or require the seeking of information from the territory of the other Party, until either (i) a reasonable period has elapsed after notification without receipt of a response requesting consultations, or (ii) it has in good faith provided the other Party with an opportunity for requested consultations and has given serious consideration to any information and views provided in the course of the consultations. Where, because of an exceptional circumstance, immediate action must be taken, an opportunity for consultation will be provided as soon as feasible thereafter.

(2) The Party which believes its significant national interests are likely to be affected by the proposed actions of the other Party will, consistent with paragraph 10 below and its national laws and interests, explain in sufficient detail its significant national interests and its role, if any, in the activity in question to enable the other Party to give serious consideration to them.

(3) The good faith consideration that is to be accorded to the national interest of the other Party during consultations may lead to the avoidance or minimization of a conflict of national interests. If each Party asserts that its own national interest is predominant and it is unable to defer to the expressed national interest of the other, they will nonetheless seek to reduce, by accommodation and compromise, the scope and intensity of the conflict and its effects.

8. *Information from Private Persons*

(1) Either Party may utilize whatever means it considers necessary to obtain for antitrust investigations and proceedings relevant information located in its own territory, whether or not an entity from which information is sought has a parent or subsidiary in the territory of the other.

(2) Where, in the opinion of the investigating Party, information is adequately available from sources within its territory, that Party will, in the first instance, attempt to obtain such information from those sources before seeking it from the territory of the other Party.

(3) If a Party intends to seek information located in the territory of the other Party, it will attempt to obtain the information by voluntary means in the first instance, unless it concludes that in the specific circumstances compulsory process should be used. Examples of such circumstances include, but are not limited to, concern that evidence might otherwise be destroyed or removed or that voluntary compliance would not be forthcoming. If the Party in whose territory the information is located requests consultations, the process normally will not be issued until there has been a reasonable opportunity for consultation. If exceptional circumstances require that the process be issued before there has been an opportunity for requested consultation, the Party that issued the process will not seek to enforce compliance until a reasonable period for consultation, if requested, has elapsed.

(4) When requests for information located in the territory of the other are made, they will be framed as narrowly and specifically as possible in order to minimize the financial and administrative burden on the recipient.

(5) After notification and consultation or waiver thereof, and subject to paragraph 5, voluntary in-person interviews with private persons may generally be conducted in the territory of the other Party. Such Party retains the right to attach any conditions to the conduct of an interview that it deems appropriate, including the attendance of its officials at such interviews.

9. *Exchange of Information between Governments*

In furtherance of principles of international comity, the Parties will cooperate with and assist each other in the enforcement of their respective antitrust laws through the exchange of information. This exchange will be subject to compliance with national laws, considerations of national interest and the establishment of adequate safeguards respecting confidentiality referred to in paragraph 10 below.

10. *Confidentiality of Intergovernmental Communications*

(1) The issues of confidentiality that arise in exchanges of information between the Parties are acknowledged to be matters of importance, and each Party will use its best efforts to assure confidentiality to the extent consistent with its national law. The Parties agree that the degree to which either Party discloses information to the other pursuant to this Understanding may be subject to and dependent upon the acceptability of the assurances given by the other with respect to confidentiality and with respect to the purposes for which the information will be used. Each Party will oppose, to the extent possible under its law, any application for disclosure not authorized by the other. In addition, the Parties recognize that there may be limitations imposed by their laws on the disclosure by one Party to the other of certain classes of information each possesses.

(2) The Parties agree that notifications and consultations pursuant to this Understanding will, unless otherwise indicated, be deemed exchanges of confidential information between the Parties, and that their occurrence or substance will not be disclosed unless the providing Party consents to disclosure or disclosure is compelled by law. However, after an individual or business entity has been advised by the investigating Party of an investigation or inquiry, the notified Party may communicate the fact of notification to that individual or entity and may communicate with the individual or entity regarding such information as the investigating Party has disclosed to that individual or entity. The investigating Party will, at the request of the other Party, inform the other Party of the time and manner in which any request for information from the territory of the other Party will be made. The investigating Party will provide such information as promptly as possible.

11. *Private Antitrust Suits*

(1) When a private antitrust suit has been commenced in a court of one of the Parties relating to conduct which has been the subject of notification and consultations under this Understanding, the Party in whose court the suit is pending will, if so requested by the other Party, inform the court of the substance and outcome of the consultations.

(2) When the conduct dealt with in a private antitrust suit has not been the subject of notification and consultation under this Understanding, the Party in whose court the suit is pending may, at the request of the other Party or on its own initiative, inform the court of how the national interest of the other party may be implicated by the suit or may offer to the court such other facts or views as it considers appropriate in the circumstances.

12. *Status of Earlier Understandings*

This Understanding, which does not constitute an international agreement, supersedes the bilateral Understanding announced in 1959 by Minister of Justice Fulton and Attorney General Rogers, and the renewal and expansion of that Understanding in 1969 by Minister of Consumer and Corporate Affairs Basford and Attorney General Mitchell. This Understanding also supersedes existing cooperative arrangements between the Department of Consumer and Corporate Affairs and the Federal Trade Commission with respect to restrictive business practices or antitrust matters.

This 9th day of March, 1984.

FOR THE GOVERNMENT OF CANADA

(Judy Erola)
Minister of Consumer and
Corporate Affairs

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

(William French Smith)
Attorney General

By direction of the
Federal Trade Commission

(James C. Miller)
(Chairman)

INDEX TO PRODUCTS, STUDIES AND OTHER SPECIFIC MATTERS

	Page
Acrylic sheet	44
Advertising, outdoor	58
Agricultural policy	56
Antennae, C.B.	61
Architects Act, Ontario	70
Audio-visual trade shows and products	62
Automobiles, parts and accessories	
—Radio equipment	62
—Sound equipment	44
—Springs	45
Bedding	40
Biscuits	56
Books	
—Western Canada	68
Broadcasting	
—Pay television	90
—Tiering of cable services and universal pay television	81
Business forms	46
Buying groups	20, 69
Carbon steel plate	43
Carpets and floor coverings	
—Bigelow Canada Ltd.	35
—Floor coverings, western Canada	41
Chainsaws	42
Clothing	
—Cluett, Peabody Canada Inc.	32
—Daymor Dress (Canada) Inc.	39
—Esteban Designs Inc.	38
—W.S. (Bud) Hardy Agency Ltd.	39
—Lois Canada Inc.	62
—Rainbow Jean Company Ltd.	40
—Savroche Enterprises Inc.	38
—Skiwear	42
—Sportswear	37
—Women's apparel	42
—Ziggy Jeans	40
Condominiums	37
Container shipping services	92
Construction equipment	
—Caterpillar diesel generating units	31
Cutting mechanisms	31
Dinnerware	45
Egg Producers' Association proposal	55
Embroidery products	62
Energy hearings	
—National Energy Board on heavy fuel oil	54
—Ontario Energy Board on natural gas as a feedstock	52
Food-service equipment	38
Food supplements, cleaning and personal care products	97

Footwear
—Athletic shoes 45
—Bottoming materials, rubber 43
—Brown Shoe Company 33
Furniture
—Meubles Daveluyville Ltée 33
—Parkland Furniture Mfg. 33
—Sklar Furniture Ltd. 34
—Upholstered products 32

Gasoline and heating oil
—Imperial Oil Ltd. 50
—Rouyn-Noranda 49
Glass and glazing 30

Heating equipment 31
Hockey
—National Hockey League 69
—Toronto Maple Leafs 67
Hogs 48
Horsemeat industry 51
Household goods, transportation of 73

Import policy 100
Intellectual property 101

Landlords, Moncton and District Association 61

Maps and cartographical material 62
Mattresses
—Sealy Eastern Ltd. 34
—Sealy (Western) Ltd. 36
Merger register 70
Metal products 45
Metering devices, electrical 44
Meters 61
Mortgage complaints 22, 98
Motion pictures 64
Musical instruments 41

Newspapers
—Daily 59
—Edmonton 69
—Thomson 69
Notarial services, Québec 68

Ontario Securities Commission, role of financial institutions in brokerage industry 83

Perfumes and cosmetics 37
Petroleum industry 56
Pharmacists Association, Toronto 60
Plastic utensils 42
Professional Engineers Act, Ontario 70
Propane gas 52

Rapeseed 57
Rating services, Radio and T.V. 63

Salt-hauling tenders 67

Scrap metal 63
Sentencing principles 97
Sewing machines 35
Shipping Conferences Exemption Act 99
Shipping, international, interdepartmental committee 100
Skis and ski equipment 37, 41
Snow removal services 67
Soft drinks 29
Statistics 14, 95
Steel, flat rolled 46
Stereo components and related equipment
—B.S.R. (Canada) Ltée/Ltd. 34
—Mission Electronics 36
—Ravel Enterprises Ltd. 32
—Sony of Canada 39
—Stereo components 39
Sugar 51

Telecommunications
—Alberta Government Telephones, terminal attachment 76
—Alberta Government Telephones, 1983 rate application 87
—Bell Canada, application for voice message service 91
—Bell Canada & B.C. Tel., application for new TCTS rates 73
—Bell Canada, connection of customer-provided terminal devices 74
—Bell Canada, Northern Telecom price comparison 76
—Bell Canada, reorganization 78
—CRTC, Telecom Cost Inquiry — Phase III 77
—Maritime Telegraph, connection of customer-provided terminal equipment 91
—Maritime Telegraph, voice page service 74
—New Brunswick Telephone, interconnection 88
—New Brunswick Telephone, radio paging service 75
—New Brunswick Telephone, interpretation of general tariff provision 80
—Newfoundland Telephone, mobile radio and paging services 77
—Radio Common Carriers, interconnection 79
—Telesat Canada, provision of satellite services 89
—Vertical Blanking Interval or SCMO services 86

Televisions and television converters
—R.C.A. Inc. 35

Transportation matters
—CTC, draft general rules 77
—CTC — Air Transport Committee hearings
—Air Ontario service to Hartford, Conn. 83
—Air Ontario service to Sudbury and North Bay 83
—Domestic advance booking charters 75
—Domestic air fare policy review 91
—Federal Express amendment of commercial licence 82
—Kelowna Flightcraft 84
—Rotary wing aircraft, economic regulation 85
—Voyageur Air service to Windsor 84
—CTC — Railway Transport Committee hearings
—Canada Southern Railway 86
—CN rebate payments to Cast Container Group 86
—Freight interswitching between railways 86

—CTC — Water Transport Committee hearings
—CN proposed acquisition in Cast Container Group 82
—Provincial review
—Alberta, intercity bus and trucking regulation 89
—Manitoba, motor carrier regulations 90
Tree fruit, B.C. 49
Trucking
—For-hire 72
—Rates, Maritimes 68
Tubular steel 43

Uranium inquiry 47

Waterbeds 36
Waste disposal, Toronto 68
Wood industry 49
Woodstoves 42